

# Appendix Five

**In The Matter Of:**  
*Tricia Wachsmuth v.*  
*City of Powell, et al.*

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*Alan Kent*  
*November 22, 2010*

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*Bray Reporting*  
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1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF WYOMING  
3 -----  
4 TRICIA WACHSMUTH, )  
5 Plaintiff, )  
6 vs. ) NO. 10-CV-041J  
7 )  
8 CITY OF POWELL, AND IN THEIR )  
9 INDIVIDUAL CAPACITY, TIM )  
10 FEATHERS, CHAD MINER, MIKE )  
11 CHRETIEN, ROY ECKERDT, DAVE )  
12 BROWN, MIKE HALL, BRETT LARA, )  
13 MATT MCCASLIN, ALAN KENT, MATT )  
14 DANZER, OFFICER BRILAKIS, LEE )  
15 BLACKMORE, CODY BRADLEY, KIRK )  
16 CHAPMAN, JOHN DOES #1-#4, )  
17 Defendants. )  
18  
19 DEPOSITION OF ALAN KENT  
20 11:22 a.m., Monday, November 22, 2010  
21  
22 Pursuant to notice, the deposition of ALAN  
23 KENT was taken in behalf of Plaintiff in accordance  
24 with the applicable Federal Rules of Civil Procedure at  
25 270 North Clark, Powell, Wyoming, before Vonn R. Bray,  
Registered Professional Reporter and Notary Public of  
the State of Montana.

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Also Present: Tim Feathers

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1 ALAN KENT,  
2 having been first duly sworn, testified as follows:  
3 DIRECT EXAMINATION  
4 BY MR. GOSMAN:  
5 Q. Officer, before we begin today, there's some  
6 general instructions that I would like to visit with  
7 you about. Let me ask you first: Have you given a  
8 deposition before?  
9 A. No.  
10 Q. Have you discussed with your attorneys the  
11 procedure that we'll be using today?  
12 A. Yes.  
13 Q. I will be asking you questions and you will  
14 be required to answer the questions unless you're  
15 instructed by your counsel not to answer them; do you  
16 understand that?  
17 A. Yes.  
18 Q. And you will be required to answer the  
19 questions truthfully because they are given under oath;  
20 do you understand that?  
21 A. Yes.  
22 Q. And if you have any problems with a question  
23 I ask, I would appreciate it if you would ask for  
24 clarification so that we can get matters cleared up  
25 before you give an answer and we go on. Would that be

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1 A. No.  
2 Q. Have you ever been arrested for any crime  
3 other than a traffic violation?  
4 MS. WESTBY: You know, this is another one of  
5 those ones that it's got to be a felony or a truth --  
6 MR. GOSMAN: This is a discovery deposition,  
7 Ann.  
8 MS. WESTBY: And, again, those are the  
9 questions that you're entitled to ask that has some  
10 basis and relevance. And you did it all last -- the  
11 last depositions, but you've gone back again.  
12 MR. GOSMAN: Okay. Well, I'm going to ask  
13 the question.  
14 BY MR. GOSMAN:  
15 Q. Have you ever been arrested for any crime  
16 other than a traffic violation?  
17 A. Yes.  
18 MS. WESTBY: And, again, my objection is that  
19 you are entitled to felonies or crimes of dishonesty  
20 within the last ten years. That's what you're entitled  
21 to. Those are the questions that you need to ask.  
22 MR. GOSMAN: Well, that's evidence that may  
23 be used to impeach the witness, but it doesn't limit  
24 the questions that I'm entitled to ask. And we've  
25 already gotten an answer to the question.

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1 okay?  
2 A. Okay.  
3 Q. And if you will allow me to finish my  
4 questions before you begin your answer, that will also  
5 be helpful. And there's one other small problem that  
6 does come up from time to time, and that is that the  
7 reporter is unable to really decipher on the record  
8 what an uh-huh means or huh-uh means. So we try to use  
9 just yes or no for answers to those questions, okay?  
10 A. Okay.  
11 Q. And if we -- if you would like to take a  
12 break at any time, you're free to do so; however, we  
13 will not take a break while a question is pending.  
14 A. Okay.  
15 Q. What is your full name, Officer?  
16 A. Lynn Alan Kent.  
17 Q. And what is your current address?  
18 A. 250 North Clark Street, Powell.  
19 Q. Are you currently on any medication that  
20 would impair your ability to give truthful answers here  
21 today?  
22 A. No.  
23 Q. Do you have any medical problems or illnesses  
24 that might interfere with your ability to give truthful  
25 answers to this deposition?

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1 BY MR. GOSMAN:  
2 Q. Why don't you go ahead and tell me what other  
3 crimes that you've been arrested for other than a  
4 traffic violation and when that occurred. We'll get  
5 this out of the way and move on.  
6 MS. WESTBY: And -- I guess go ahead.  
7 THE WITNESS: In 1975, petty theft.  
8 BY MR. GOSMAN:  
9 Q. And were you convicted of that?  
10 A. Yes, I pled guilty.  
11 Q. And anything else?  
12 A. No.  
13 Q. All right. Have you ever been accused of a  
14 crime involving dishonesty?  
15 A. Petty theft.  
16 Q. Okay. All right. Have you ever had a  
17 restraining order placed against you?  
18 A. No.  
19 Q. Let's go ahead and start with your  
20 educational background, Officer Kent.  
21 Could you tell me where you went to high  
22 school?  
23 A. I graduated from Thomas Downey High School in  
24 Modesto, California, in 1975.  
25 Q. Okay. And did you have any education after

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1 you received your high school diploma?  
2 A. Some college.  
3 Q. Okay. And you did receive a high school  
4 diploma; is that correct?  
5 A. Yes.  
6 Q. And where did you attend college?  
7 A. I attended some college at Modesto Junior  
8 College in Modesto, California. And also attended some  
9 college here at Northwest in Powell.  
10 Q. When did you move to Powell?  
11 A. In July or August of 1990.  
12 Q. And did you go to work for the Powell Police  
13 Department at that time?  
14 A. No.  
15 Q. What did you move to Powell for?  
16 A. To get out of California.  
17 Q. Okay. And you worked -- when did you go to  
18 work for the Powell Police Department?  
19 A. February 1st, 1995.  
20 Q. And after arriving in Powell and before you  
21 went to work for the Powell Police Department, what  
22 jobs did you hold here in the Powell area?  
23 A. Immediately before the Powell Police  
24 Department, I worked for Dick Jones Trucking for three  
25 years.

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1 Q. What did you do for them?  
2 A. Drove truck. And before that, I worked as  
3 the warehouse manager for Schwan's.  
4 Q. And have you worked for the Powell Police  
5 Department since 1995?  
6 A. Yes.  
7 Q. And what was the position that you held when  
8 you started with the Powell Police Department?  
9 A. Police officer.  
10 Q. And so what position do you hold now?  
11 A. Sergeant.  
12 Q. And you were a sergeant at the time of the  
13 execution of the Wachsmuth search warrant, which was  
14 February 24, 2009 --  
15 A. Yes.  
16 Q. -- is that correct?  
17 Would you take a minute for me and draw on  
18 this piece of paper the chain of command at the Powell  
19 Police Department? I don't think I actually have that.  
20 This will be Exhibit 51.  
21 If you could pass that pen back to me, I'd  
22 appreciate it. It's the only one I've got.  
23 A. Oh, I'm sorry.  
24  
25

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1 (Exhibit 51 identified)  
2 BY MR. GOSMAN:  
3 Q. You've listed three sergeants and a  
4 communication supervisor directly underneath the chief;  
5 is that correct?  
6 A. Yes.  
7 Q. And then you have citizens of Powell over the  
8 Chief. I think I understand what you mean by that,  
9 Chief Feathers does not report to the citizens of  
10 Powell; is that correct?  
11 A. He doesn't report to them, but he answers to  
12 them.  
13 Q. I understand.  
14 All right. Who are the other sergeants  
15 involved in the Powell Police Department?  
16 A. Sergeant Mike Chretien and Sergeant Roy  
17 Eckerdt.  
18 Q. And who is the communications supervisor?  
19 A. Teri Cozzens.  
20 Q. And was Teri Cozzens the communications  
21 supervisor in February of 2009?  
22 A. Yes.  
23 Q. And do you report directly to the Chief?  
24 A. Yes, I do.  
25 Q. And who are your reports? Which Powell

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1 police officers?  
2 A. All of them.  
3 Q. All of them, all right.  
4 So all of the Powell Police Department  
5 officers report to each of the sergeants?  
6 A. It's broke down into squads.  
7 Q. Okay.  
8 A. Right now my squad includes Officer Miner and  
9 Officer Brilakis. I'm also the direct supervisor for  
10 the community service officer, Anna Paris.  
11 Q. Okay.  
12 A. But I have authority over all officers in the  
13 department.  
14 Q. All right. And that would be true of the  
15 other sergeants as well?  
16 A. Yes.  
17 Q. All right. As a law enforcement officer, do  
18 you have certain minimum training requirements?  
19 A. Yes.  
20 Q. Do you know what they are?  
21 A. You're required, I believe -- the basic is to  
22 graduate from the academy. And then you have to  
23 maintain your training with -- I believe it's 20 hours  
24 a year minimum.  
25 Q. And do you know if the in-service training

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1 that's offered by the Powell Police Department  
2 qualifies for those training hours, those 20 training  
3 hours that you're required to have a year?  
4 A. If the requirements are met.  
5 Q. Do you know what the requirements are?  
6 A. I'm not a training officer, but -- per se --  
7 but you have to submit a lesson plan. It has to be  
8 approved by POST. And then there's some recordkeeping  
9 that goes along with that before POST approves the  
10 hours.  
11 Q. Do you know what recordkeeping is involved?  
12 A. It's a class roster attendance.  
13 Q. Okay. Have you ever had any discipline,  
14 including verbal discipline, within the last five  
15 years --  
16 MS. WESTBY: That's not the question.  
17 MR. GOSMAN: Isn't it?  
18 MS. WESTBY: Nope.  
19 BY MR. GOSMAN:  
20 Q. All right. Have you ever been disciplined  
21 for something within the last five years that is not  
22 reflected in your personnel file?  
23 A. No.  
24 Q. Has your standing as a peace officer ever  
25 been challenged or under investigation?

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1 A. No.  
2 Q. When you meet your 20 hours of required  
3 training each year to remain certified as a police  
4 officer, do you include in-service training or do you  
5 take POST recognized training courses?  
6 MS. WESTBY: Object to the form of the  
7 question.  
8 MR. GOSMAN: That is -- strike that.  
9 BY MR. GOSMAN:  
10 Q. How do you get your training every year?  
11 A. I'm not sure I understand what you're asking.  
12 Q. Let's do this: When you train -- when you  
13 apply for credits with your -- when you apply for  
14 credits for training with the State, do you use -- do  
15 you use in-service training that's supplied by the  
16 Powell Police Department?  
17 A. If it's recognized by POST, that goes to  
18 count towards your total for the year, yes.  
19 Q. Do you know if that's happened in your case?  
20 A. Yes.  
21 Q. So you have had in-service training with the  
22 Powell Police Department that has been recognized as  
23 POST training?  
24 A. Yes.  
25 Q. All right. And so there would have been a

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1 roster generated for the training that occurred on  
2 those dates?  
3 A. The POST sends out a summary of your training  
4 that -- on that POST hours list that would be  
5 recognized.  
6 (Exhibit 31 identified)  
7 BY MR. GOSMAN:  
8 Q. Let's go ahead and turn to Exhibit 31.  
9 A. I'm assuming in this big book?  
10 Q. Yes. And I believe that your POST training  
11 records are at the documents that are identified 1038  
12 and 1039. It's near the -- it's towards the back, I  
13 think. No, actually it's towards the front. Do you  
14 see that?  
15 A. Yes.  
16 Q. Does this document, these two pages, Bates  
17 Number 1038 and 1039, accurately reflect your training  
18 history as a law enforcement officer, your POST  
19 training?  
20 A. Through September 1st of 2009.  
21 Q. And I noticed that you received your basic  
22 law enforcement training in 1982; is that correct?  
23 A. That was the first time I went to the  
24 academy.  
25 Q. Okay. And how long did you work for law

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1 enforcement in California?  
2 A. Less than a year.  
3 Q. Why did you leave?  
4 A. I became self-employed.  
5 Q. What was your position with the Modesto --  
6 was it the Modesto, California Police Department?  
7 A. Sonora Police Department. Sonora,  
8 California.  
9 Q. And what was your position with them?  
10 A. Police officer.  
11 Q. Would you take a moment and go through this  
12 record and identify for me all the training that you've  
13 had relative to dynamic entry?  
14 A. Shall I start at the top and just work my way  
15 down?  
16 Q. Yes, sir.  
17 A. 2/9/1995 -- or 5/4/1995, Interior Tactics.  
18 Q. Okay.  
19 A. There was some training involved in  
20 9/21/2001, 40 hours of basic drug investigation. There  
21 was training 3/8/2002, DEA Basic Narcotics Course.  
22 6/13/2003, Patrol Interdiction Emergency Response.  
23 10/5/2005, Patrol Tactical Response. That's all I can  
24 see.  
25 Q. The basic drug investigation course consisted

<p>ALAN KENT - November 22, 2010 Direct Examination by Mr. Gosman</p> <p>Page 17</p> <p>1 generally of what? That was the course that you took 2 in September of 2001. 3 A. That was a course taught by DCI. 4 Q. Okay. 5 A. And week-long course in Sheridan. Basic drug 6 investigation, including surveillance, covert drug 7 buys. There was some entry hostage situations in 8 there, scenarios that we worked on. 9 Q. About what part of the class would you say 10 those scenarios involved? What percentage? 11 MS. WESTBY: Object to the form of the 12 question. 13 THE WITNESS: Probably less than 10 percent. 14 BY MR. GOSMAN: 15 Q. Okay. Let's go through that same question 16 with regard to the DEA basic narcotics course. 17 MS. WESTBY: Same objection. 18 BY MR. GOSMAN: 19 Q. Approximately, how much of that course was 20 centered on dynamic entry? 21 A. There was two days of training, I believe, on 22 that. 23 (Exhibit 28 identified) 24 BY MR. GOSMAN: 25 Q. Let's take a look at Exhibit 28 for a moment.</p>	<p>ALAN KENT - November 22, 2010 Direct Examination by Mr. Gosman</p> <p>Page 19</p> <p>1 MR. GOSMAN: Give me a minute. I'm going to 2 take just a minute and see if I can find that. I think 3 I've got that outside. 4 (Recess taken 11:43 a.m., 5 November 22, 2010) 6 BY MR. GOSMAN: 7 Q. Okay. Officer, I'm going to hand you a sheaf 8 of documents, which we're not going to mark at this 9 time, at least. And I'll represent to you that those 10 are documents that were produced in connection with 11 your training. 12 And why don't you take just a moment and 13 identify the beginning and ending page numbers and the 14 document Bates stamp, it will be on that first page 15 there. 16 A. This one here? 17 Q. Yes. 18 A. The 1036? 19 Q. Okay. And it's L -- what is the -- 20 A. LGLP Wachsmuth. 21 Q. Okay. 1036. And what's the last number? 22 A. 1161. 23 Q. Okay. Go through those documents, if you 24 could, and tell me if you could see any of those 25 training manuals that we were talking about with</p>
<p>ALAN KENT - November 22, 2010 Direct Examination by Mr. Gosman</p> <p>Page 18</p> <p>1 Is this a course manual that you received in connection 2 with your Countermeasures Technical Institute Course? 3 I believe it was in 2003. 4 A. I don't know. 5 Q. Why don't you take a minute and look at it. 6 A. Well, I'm looking at the copyright and it 7 says 2008. And the course was in 2005. 8 Q. Yeah, the copyright is 2008, that's correct. 9 Take a minute and look at that and tell me if 10 that -- do you have that manual? Let me ask that 11 question. 12 A. I did at one time. I believe I submitted it. 13 Q. Okay. Take a look at the manual and tell me 14 if that is, in fact, a reflection of the course that 15 you took in 2003. 16 MS. WESTBY: I'm going to object to the form 17 of the question. What are the Bates numbers at the 18 bottom of that document? 19 MR. GOSMAN: Which one? 20 MS. WESTBY: The one that you're having him 21 look at. 22 MR. GOSMAN: Thirty-seven. Miner, this is 23 Miner's training. 24 MS. WESTBY: The documents produced relevant 25 to this witness are listed Kent-Training.</p>	<p>ALAN KENT - November 22, 2010 Direct Examination by Mr. Gosman</p> <p>Page 20</p> <p>1 respect to your courses in 2003 and 2005. 2 MS. WESTBY: Those aren't the Kent-Training 3 documents. 4 MR. GOSMAN: Those are the Kent-Training 5 documents I have. 6 MS. WESTBY: Well, no, we submitted documents 7 to you that are Bates stamped Kent-Training-number. 8 MR. GOSMAN: They were submitted to me under 9 what cover? 10 The documents that I pulled out -- we're on 11 the record. The documents that I pulled out are 12 documents that were produced pursuant to the 13 defendant's responses to plaintiff's first discovery 14 request directed to all defendants. 15 MS. WESTBY: And these are the responses that 16 we submitted to you on your first discovery. 17 MR. GOSMAN: Would you mind showing me the 18 cover on that? 19 MS. WESTBY: The cover of the pleading? 20 MR. GOSMAN: Well, just the first page that 21 identifies what you're sending me. 22 MS. WESTBY: But are you talking about the 23 cover of the pleading or -- 24 MR. GOSMAN: Yes. Maybe I've got it and I'm 25 just in the wrong place.</p>

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1 MR. THOMPSON: And, Counsel, so that -- we  
2 can go off?  
3 MR. GOSMAN: Yes.  
4 (Discussion held off the  
5 record.)  
6 MR. GOSMAN: All right. We're going to  
7 continue the deposition for a few minutes until lunch  
8 and then I'll see if I can get that straightened out.  
9 Thank you.  
10 MS. WESTBY: All of ours are for each  
11 individual officer, the officer's last  
12 name-training-documents.  
13 (Exhibit 35 identified)  
14 BY MR. GOSMAN:  
15 Q. Okay, let's now turn to Exhibit 35. And I'll  
16 tell you that this exhibit is a compilation of the  
17 in-service training records that have been kept by the  
18 Powell Police Department for, I believe, a 5-year  
19 period going back to 2009.  
20 And what I'd like you to do is go through  
21 these for a moment and tell me which of these programs  
22 that you have participated in that dealt specifically  
23 with dynamic entry.  
24 A. The ones that I personally attended?  
25 Q. Yes, sir.

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1 A. I have no idea which ones I personally  
2 attended.  
3 Q. You do not?  
4 A. If I was not sick or on vacation, I would  
5 have been at any training that our department offered.  
6 But specific date, I...  
7 Q. Okay. Why don't you take a minute and go  
8 through that group of documents and tell me which  
9 courses are specifically related to dynamic entry.  
10 A. I would assume -- do you want the number at  
11 the bottom of the page?  
12 Q. Yes. Well, we need to identify where you're  
13 at in the document, so go ahead.  
14 A. So you do want the number at the bottom of  
15 the page?  
16 Q. Go ahead. Yes, let's do that.  
17 A. On the first one, it's numbered 1814.  
18 Q. Uh-huh.  
19 A. I'm identifying, what, again?  
20 Q. The in-service training that would have  
21 related specifically to dynamic entry.  
22 A. At the very top of the list is 10/21 roll  
23 call video, "Your Vest Won't Stop This Bullet."  
24 Q. Right. Would you agree with me that that  
25 training could apply generally to self-defense,

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1 self-protection measures that police officers take in a  
2 host of scenarios?  
3 MS. WESTBY: Object to the form of the  
4 question.  
5 MR. THOMPSON: Join.  
6 THE WITNESS: I would agree to that, but I  
7 would agree that it would also apply to dynamic  
8 entries.  
9 BY MR. GOSMAN:  
10 Q. How so?  
11 A. You're liable to get shot while making a  
12 dynamic entry.  
13 Q. So -- all right. So that's the relationship  
14 that this course had to dynamic entries?  
15 A. In my opinion, yes.  
16 Q. All right. Go ahead.  
17 Do you remember that course, by the way?  
18 A. No.  
19 Q. Okay. Go ahead.  
20 A. Probably 1209, search warrants.  
21 Q. It doesn't say anything specifically about  
22 the use of dynamic entry or no-knock warrants or  
23 anything like that, does it?  
24 MS. WESTBY: Object to the form of the  
25 question.

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1 THE WITNESS: Not specifically.  
2 BY MR. GOSMAN:  
3 Q. All right. Now, I'm not talking about things  
4 that could apply to dynamic entry. I'm talking about  
5 things that it's clear did involve dynamic entry  
6 training.  
7 A. Okay.  
8 MS. WESTBY: Object to the form of the  
9 question.  
10 MR. THOMPSON: Join.  
11 THE WITNESS: I'm not sure I can answer that.  
12 BY MR. GOSMAN:  
13 Q. Well, let's just do the best you can. If  
14 there's anything in this list that deals specifically  
15 with dynamic entry, call it to my attention.  
16 A. So I'm assuming you're wanting something in  
17 the title?  
18 Q. Well, you know, either dynamic entry or room  
19 entry or Israeli Lean or flashbang devices or something  
20 that is clearly associated with dynamic entry.  
21 MS. WESTBY: Object to the form of the  
22 question. Your question lists some of the things but  
23 not all of the things --  
24 MR. GOSMAN: I didn't pretend to list all of  
25 the things.



<p>ALAN KENT - November 22, 2010 Direct Examination by Mr. Gosman</p> <p>Page 25</p> <p>1 MS. WESTBY: Yes, but then whenever he brings 2 up other items, you tell him that those are not 3 appropriate items. I object to the form of the 4 question. 5 MR. THOMPSON: Join. 6 THE WITNESS: Again, in June of '06, search 7 warrants is listed. 8 BY MR. GOSMAN: 9 Q. June of '06, would that be -- oh, I see, 10 search warrants. Yes, there's also high-risk warrant 11 service, correct? 12 A. Yes, I missed that one 13 Q. Okay. I've got a copy of the policy and 14 procedures manual. Let's go ahead and turn to that 15 section. 16 You'll notice in the column on the right-hand 17 side of the page there that it refers to a section of 18 the policy and procedures manual; is that correct? 19 A. Yes. 20 Q. All right. Well, let's go ahead and take a 21 look at 3.6.16. 22 THE REPORTER: Is that is date? 23 MR. GOSMAN: No, that is a policy number 24 3.6.16. And I think we will go ahead and -- we'll mark 25 that as an exhibit. We'll mark it as Exhibit 52.</p>	<p>ALAN KENT - November 22, 2010 Direct Examination by Mr. Gosman</p> <p>Page 27</p> <p>1 A. Yes. 2 Q. All right. So that certainly isn't 3 inconsistent with what you've experienced, what you see 4 on the page here? 5 A. Well, I know that there has been updates to 6 the policy manual, so numbers may move down the line or 7 move up the line. 8 Q. I see, okay. All right. 9 Let's see if you can find in the index there 10 a reference to search warrants, to the policy on search 11 warrants. 12 I'm sorry, you're looking at the wrong 13 document. 14 A. No, there was two different ones. You talked 15 about search warrants and then there was -- 16 Q. High-risk warrant search. 17 A. -- high risk. Which ones do you want me to 18 look for? 19 Q. Well, right now I want you to just go into 20 the index and look for search warrants and let's see if 21 we can figure out whether we've got the correct 22 numbering format for this training. 23 MS. WESTBY: Object to the form of the 24 question. 25</p>
<p>ALAN KENT - November 22, 2010 Direct Examination by Mr. Gosman</p> <p>Page 26</p> <p>1 (Exhibit 52 identified) 2 THE WITNESS: 3.6.16? 3 BY MR. GOSMAN: 4 Q. Yes. 5 A. It has confidential information. 6 Q. Okay. Well, do you -- can you tell me why -- 7 or what the entry on the right-hand column, next to 8 search warrants that says policy, page 3.6.16 refers 9 to? 10 A. I can't tell you. I didn't make this list. 11 Q. Okay. Let me ask this question: Is it your 12 understanding that the materials that are discussed in 13 the in-service training are identified in that third 14 column there to the right? 15 MS. WESTBY: I object to the form of the 16 question. 17 MR. THOMPSON: Join. 18 THE WITNESS: They appear to be, since it 19 says policy. 20 BY MR. GOSMAN: 21 Q. Okay. Now, do you know for a fact that when 22 you had these in-service trainings that occasionally 23 they will pull out a policy from the policy and 24 procedures manual and review that policy as the 25 in-service training?</p>	<p>ALAN KENT - November 22, 2010 Direct Examination by Mr. Gosman</p> <p>Page 28</p> <p>1 BY MR. GOSMAN: 2 Q. While you're looking, do you have a copy of 3 this policy and procedures manual, personal copy? 4 A. Not with me, no. 5 Q. Do you have one, though? 6 A. In my office, yes. 7 I found it. 8 Q. All right. What is the policy number? 9 A. 3.6.09. 10 Q. And that's for search warrants. 11 Okay. Well, 3.6.09 is the policy that 12 references search warrants in the document that I've 13 handed you, which is Exhibit 52. And that's a copy of 14 the policy and procedures manual, correct? 15 A. Yes. 16 Q. And is there anything in that policy on 17 search warrants that deals specifically with training 18 for dynamic entry? 19 MS. WESTBY: With training for dynamic entry? 20 MR. GOSMAN: Yes. 21 MS. WESTBY: Object to the form of the 22 question. 23 THE WITNESS: What was the question again? 24 BY MR. GOSMAN: 25 Q. Do you find anything in that policy on search</p>

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1 warrants that deals specifically with training for  
2 dynamic entry?  
3 MS. WESTBY: Same objection.  
4 THE WITNESS: I find on the second page of  
5 the policy under letter six, "Safety of personnel  
6 conducting the search in terms of potential resistance  
7 to the search and possible presence of others who may  
8 be endangered by resistance to the search warrant may  
9 require the use of an entry team or special weapons  
10 team."  
11 MR. GOSMAN: Did you get that?  
12 BY MR. GOSMAN:  
13 Q. All right. Well, that has to do with the  
14 policy about when to use a special entry team and not  
15 training in the tactics that would be deployed by a  
16 special entry team; wouldn't you agree with me there?  
17 A. Yes.  
18 MS. WESTBY: Object to the form of the  
19 question.  
20 BY MR. GOSMAN:  
21 Q. All right. Now, let's just make sure that  
22 we're -- we've got our bases covered here.  
23 Under search warrants on the June 6  
24 in-service training, we have policy page 3.6.16, and  
25 you've indicated that's the policy that relates to

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1 confidential informants.  
2 I want you to take a look at that and tell me  
3 if there's anything in that policy relating to  
4 confidential informants that deals specifically with  
5 training for dynamic entry.  
6 MS. WESTBY: Are you asking him if the policy  
7 refers to training for dynamic entry?  
8 MR. GOSMAN: Uh-huh.  
9 THE WITNESS: What was the question again?  
10 BY MR. GOSMAN:  
11 Q. Do you see anything in that policy regarding  
12 confidential informants that relates specifically to  
13 training for dynamic entry?  
14 A. No.  
15 Q. And before we go for lunch, I'll just have  
16 one other little exercise here. Let's look at the  
17 policy that's identified as 3.7.23. That's the  
18 high-risk warrant service.  
19 MS. WESTBY: It's .23, right?  
20 MR. GOSMAN: Yes.  
21 BY MR. GOSMAN:  
22 Q. And I'll give you a preview of the question  
23 here. The question is going to be: Does that policy  
24 describe the policies for initialing high-risk warrant  
25 service or does it identify specific training for

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1 high-risk warrant service?  
2 MR. THOMPSON: Objection as to form.  
3 MS. WESTBY: Join.  
4 THE WITNESS: What was the number?  
5 BY MR. GOSMAN:  
6 Q. 3.7.23.  
7 A. There is no 3.7.23.  
8 Q. I was aware that there was one of them  
9 missing and that may be it.  
10 Maybe we could check during lunch to see if  
11 there is a policy 3.7.23. And I think -- where does it  
12 end there in that manual that you're looking at?  
13 A. The end of this section?  
14 Q. Yes. 3.7.15 or something, or 6?  
15 A. Oh, you're looking at the page number.  
16 3.7.23 is the page number. The policy number would be  
17 3.7.13.  
18 Q. Okay. All right. Thank you. Is it there,  
19 the high-risk warrant service policy?  
20 A. Yeah.  
21 Q. All right.  
22 A. What was the question again?  
23 Q. The question is: Is there anything specific  
24 to training for dynamic entry that is contained in the  
25 policy on high-risk warrant service that you just

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1 looked at?  
2 MS. WESTBY: Object to the form of the  
3 question.  
4 MR. THOMPSON: Join.  
5 THE WITNESS: Not specific, but it alludes to  
6 it.  
7 MR. GOSMAN: Okay. All right. Okay. Let's  
8 go ahead and have lunch and we can be back here in an  
9 hour and 15 minutes.  
10 (Recess taken 12:12 p.m.,  
11 November 22, 2010)  
12 BY MR. GOSMAN:  
13 Q. Officer, we were going through and -- I'm  
14 sorry, Sergeant Kent. We were going through the  
15 in-service training records, and we sort of finished up  
16 before lunch on the June 6th high-risk warrant service  
17 and search warrants and in-service training.  
18 And I'd like you to go ahead and continue on  
19 from there. And, again, calling attention to any  
20 training that specifically deals with dynamic entry.  
21 A. So the words dynamic entry need to be in the  
22 title?  
23 Q. Well, no, they don't, because we know that  
24 there are different components in dynamic entry  
25 training, such as room entry, room clearing, breaching,

<p>ALAN KENT - November 22, 2010 Direct Examination by Mr. Gosman</p> <p>Page 33</p> <p>1 flashbang devices, and there are others. So, you know, 2 I'm referring specifically to things that are directly 3 relevant to dynamic entry training. 4 MR. THOMPSON: Objection as to form. 5 MS. WESTBY: Join. 6 THE WITNESS: On July of '06, less lethal 7 munitions. 8 BY MR. GOSMAN: 9 Q. Just out of curiosity, do you know what less 10 lethal munitions were involved in the event of the 11 24th of February involving the Wachsmuth warrant? 12 A. Do you mean carried or used? 13 Q. Were there any carried? 14 A. Yeah -- yes, excuse me. 15 Q. Let's take just a minute and talk about that. 16 What less lethal munitions were involved in 17 that warrant service that night? 18 A. All officers in the department are issued 19 tasers that we carry on our belts at all times. 20 Q. And a taser can be used in a host of 21 circumstances, so it's not directly relevant to dynamic 22 entry. 23 MS. WESTBY: Object to the form of the 24 question. 25 MR. THOMPSON: Join.</p>	<p>ALAN KENT - November 22, 2010 Direct Examination by Mr. Gosman</p> <p>Page 35</p> <p>1 device can be used in different occasions. A taser can 2 be used in multiple occasions. I mean, they are tools 3 at our disposal. 4 Q. Let's go to policy page 3.3.5. And, again, 5 that's the page. I'm not sure which policy it is. 6 A. 3.3.5? 7 Q. Yes, I believe so. It's the policy regarding 8 less lethal munitions. 9 A. 3.3.07. 10 Q. Is it? 11 A. Uh-huh. 12 Q. How long is that? 13 A. About half page, total. 14 Q. Okay. Go ahead and take a look at it. 15 A. Okay. 16 Q. Okay. Does it deal specifically with dynamic 17 entry in any way? 18 A. It deals with if there are shotgun rounds. 19 Q. Shotgun? 20 A. They are impact weapons, beanbag rounds. 21 Q. Yes. And what does it say about them? I 22 don't have my copy of it. Just read it into the 23 record. 24 A. The whole policy? 25 Q. No, just that that pertains to the shotgun.</p>
<p>ALAN KENT - November 22, 2010 Direct Examination by Mr. Gosman</p> <p>Page 34</p> <p>1 THE WITNESS: It can be. 2 BY MR. GOSMAN: 3 Q. Well, you can use a taser in a dynamic entry, 4 correct? 5 A. Correct. 6 Q. The same that you can use a handgun? 7 A. Correct. 8 Q. So if you were -- if your in-service training 9 involved handgun or firearms training, that would cover 10 a host of circumstances in which the officer might find 11 himself, correct? 12 A. I'm not sure I understand where you're going 13 -- 14 Q. Well, there's a difference between a firearms 15 training program and, for instance, a flashbang 16 development program, because the flashbang is used 17 almost exclusively in this kind of situation, whereas, 18 firearms are used in a host of other situations. 19 They -- used in chase -- police chases. They can be 20 used in running down suspects. They can be used in 21 making arrests on the street and so on. 22 Do you see the difference I'm getting at 23 there? 24 A. Not really because you can -- a firearm can 25 be used in a -- different occasions. A diversionary</p>	<p>ALAN KENT - November 22, 2010 Direct Examination by Mr. Gosman</p> <p>Page 36</p> <p>1 A. The whole policy pertains to less lethal 2 shotgun munitions. 3 Q. Less lethal munitions, shotgun munitions. 4 Does it describe when they are to be deployed? 5 A. At one point it says subdue a subject 6 displaying a level of aggression that is at or above 7 being assaultive without a weapon. 8 Q. Okay. All right. And does it describe the 9 procedures for deploying this device? 10 A. The question you're asking is what I just 11 basically said, if I'm understanding the question 12 right. 13 Q. Does it mention anything about taser in that 14 policy? 15 A. Not in that section. There's a separate 16 taser policy. 17 Q. Do you know if there were less lethal 18 munitions described in that policy section that were in 19 use the night of the Wachsmuth warrant service? 20 MS. WESTBY: Object to the form of the 21 question. 22 MR. THOMPSON: Join. 23 THE WITNESS: There was none used. 24 BY MR. GOSMAN: 25 Q. Okay. All right. Let's continue on our</p>

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1 search through Exhibit 31, the in-service records.  
2 A. November of '06, active threat response.  
3 Q. Okay. And let's go ahead and turn to the  
4 policy section that's referenced there.  
5 Do you understand what the term active threat  
6 means in police terminology?  
7 A. I know what it means to me.  
8 Q. Okay. What does it mean?  
9 A. It means that there's somebody you're going  
10 to engage that could do you harm.  
11 Q. Okay, very good.  
12 A. Okay.  
13 Q. Okay. Take a minute and read that.  
14 And by the way, you don't have to read it  
15 word for word, just generally familiarize yourself with  
16 that document if you can.  
17 A. I'd feel more comfortable reading it word for  
18 word if you're going to ask me questions about it.  
19 Q. Okay. And the question I'm going to ask you  
20 is, is there anything specific in that active threat  
21 response policy that relates to training for dynamic  
22 entry?  
23 MR. THOMPSON: Objection as to form.  
24 MS. WESTBY: Join.  
25 THE WITNESS: What was the question again?

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1 BY MR. GOSMAN:  
2 Q. Is there anything in that policy that you  
3 just read regarding active threat response that  
4 specifically relates to training for a dynamic entry?  
5 A. The whole policy goes towards the training  
6 we've had to dynamic entry. I mean, it talks about  
7 rapid deployment, safe approach routes, number of  
8 suspects, types of weapons. I mean, that all goes back  
9 to the training that we received.  
10 Q. Okay. Well, I'm talking about something  
11 different than an announcement of the policy regarding  
12 active threat and what resources are available for --  
13 to respond to active threat. I'm talking about  
14 specific training.  
15 In other words, is there anything in that  
16 policy that specifically identifies how you would  
17 breach a door or how you would enter a room or how you  
18 would respond to a shooter?  
19 MR. THOMPSON: Objection as to form.  
20 THE WITNESS: It talks about rapid  
21 deployment.  
22 BY MR. GOSMAN:  
23 Q. What does it say?  
24 A. "Is rapid deployment necessary or are there  
25 other reasonable options available? What is the risk

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1 of rapid deployment compared to the gain of potentially  
2 saving lives?"  
3 Q. Those are policy considerations, are they  
4 not?  
5 A. Yeah.  
6 Q. All right. They don't have anything to do  
7 with training you how to respond in that situation,  
8 correct?  
9 MS. WESTBY: Objection as to form.  
10 MR. THOMPSON: Join.  
11 THE WITNESS: The training we get helps us to  
12 respond to these situations.  
13 BY MR. GOSMAN:  
14 Q. And the training that you get may be relevant  
15 to that. But it's not contained in that policy.  
16 You're not receiving any training if you attend  
17 in-service on such and such a date and review this  
18 policy; you're not actually receiving training for  
19 dynamic entry.  
20 MR. THOMPSON: Object to the form of the  
21 question.  
22 BY MR. GOSMAN:  
23 Q. You're simply reviewing the policy, correct?  
24 MS. WESTBY: Object to the form of the  
25 question.

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1 MR. THOMPSON: Join.  
2 THE WITNESS: I told you I didn't remember  
3 the exact -- this -- our training involves where we  
4 would do hands-on training. And we would also at times  
5 review policies at the same time.  
6 BY MR. GOSMAN:  
7 Q. Let's separate which is which at this point,  
8 and we can talk about the hands-on training later.  
9 This in-service training deals simply with studying the  
10 policy, correct?  
11 A. I don't remember what this training was. You  
12 asked me to go through and list the ones --  
13 Q. Thank you. That is a fair statement.  
14 Nevertheless, the policy itself that is  
15 referred to next to the entry Active Threat Response is  
16 the policy that defines when an active threat response  
17 is appropriate and the considerations to be taken,  
18 correct?  
19 A. Yes.  
20 Q. All right. Now, you mentioned that there was  
21 actual hands-on training that you do in connection with  
22 these activities. Why don't you tell me about that.  
23 A. Which one? I mean, I've had training --  
24 ongoing training since I started in 1995.  
25 Q. And would that be the courses we talked about

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1 previously that are relevant to dynamic entry? Your --  
2 A. The courses that are mentioned on the POST  
3 hours?  
4 Q. Yes.  
5 A. Or the stuff that we've done as a department,  
6 as a team together?  
7 Q. That's what I want to know about. I want to  
8 know about the stuff that you've done together as a  
9 department that's not reflected in your POST records.  
10 And it's not apparently reflected in the in-service  
11 training.  
12 MS. WESTBY: Object to the form of the  
13 question. Misstates the documents.  
14 MR. THOMPSON: Join.  
15 THE WITNESS: Well for instance, at the  
16 beginning of my POST record, it mentioned interior  
17 tactics. That was when I first started. That was my  
18 first introduction to diversionary devices in 1995.  
19 BY MR. GOSMAN:  
20 Q. And that's on your POST record, and we talked  
21 about that, correct?  
22 A. No, I haven't talked about that one.  
23 Q. I believe you did.  
24 But anyway, what are we missing from the POST  
25 records that you can refer to specifically that involve

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1 training in dynamic entry that you have received from  
2 the Powell Police Department?  
3 A. We've done Simunitions training. We've done  
4 training at the range on impact munitions, on  
5 diversionary devices. I mean, I can't give you a date  
6 based on these because I don't know what they are.  
7 Q. Was there just one date that you did these  
8 things?  
9 A. We've done them since 1995. I've trained  
10 since 1995.  
11 Q. All right. Well, let's take diversionary  
12 devices. When have you trained on diversionary devices  
13 with the Powell Police Department? I think you  
14 mentioned that you may have done that --  
15 A. My first time was in 1995 when I first  
16 started on that interior tactics course.  
17 Q. All right. Was that with the Powell Police  
18 Department?  
19 A. Yes.  
20 Q. And then you did it again here this -- just  
21 within the last few months, didn't you?  
22 A. Well, the last time we did it was last month,  
23 I believe.  
24 Q. And between 1995 and last month, had you ever  
25 trained using a diversionary device?

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1 A. Yes.  
2 Q. Where?  
3 A. The time I used it was when we went through  
4 the countermeasures training at the fairgrounds. And I  
5 threw one at the range in Cody.  
6 Q. All right. Let's take the first -- your  
7 first statement first. The countermeasures program,  
8 which countermeasures program was it that involved the  
9 use of a diversionary device?  
10 A. The one I can remember was in 2005.  
11 Q. All right. So you threw a diversionary  
12 device in 2005?  
13 A. Yes.  
14 Q. Then you mentioned something else, something  
15 in Cody?  
16 A. That was part of that training.  
17 Q. That same training?  
18 A. Yes.  
19 Q. So those two events are actually one event?  
20 A. Yeah, we had to use the range in Cody because  
21 our range was too sloppy with mud.  
22 Q. All right. So have you had any other  
23 training with regard to diversionary devices from the  
24 Powell Police Department?  
25 A. Yes.

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1 Q. When?  
2 A. Since -- ongoing since 1995. I mean, I -- I  
3 don't have a specific date. But we've trained with  
4 live ones. We've trained with simulated ones where we  
5 throw an empty body.  
6 Q. Do you have a record of any of those training  
7 days, or do you guys just grab a diversionary device  
8 out of the locker room and go out and toss it?  
9 MR. THOMPSON: Objection as to form.  
10 MS. WESTBY: Join.  
11 THE WITNESS: I don't know. I'm not  
12 responsible for keeping the records.  
13 BY MR. GOSMAN:  
14 Q. Well, tell me about how we can know that  
15 these training events with the diversionary device  
16 actually occurred.  
17 A. Because I'm under oath and I told you they  
18 did.  
19 Q. And you're telling me they have occurred on  
20 more occasions than the ones that we've talked about  
21 that actually have some record?  
22 A. Yes.  
23 Q. All right. And how about room entry as an  
24 element of dynamic entry?  
25 A. Have we trained more than once on that?

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1 Q. Yeah.  
2 A. Yes.  
3 Q. When and where?  
4 A. We've trained at the police department.  
5 We've trained at the fairgrounds. We've trained in a  
6 deserted house north of my house that I procured for  
7 the training.  
8 Q. All right --  
9 A. We trained at the school, at the high school.  
10 We've trained at the old high school, the new high  
11 school. We've trained at Southside School.  
12 Q. All right. And when did these -- how do you  
13 document these events? Or who documents these events?  
14 A. I don't know if -- usually -- I'm assuming  
15 it's the training officer.  
16 Q. Who was the training officer for room entry  
17 for Powell Police Department?  
18 MS. WESTBY: Object to the form of the  
19 question.  
20 MR. THOMPSON: Join.  
21 BY MR. GOSMAN:  
22 Q. Who was the training officer?  
23 A. I'm not sure. We get together and train as a  
24 team. There's no specific training officer. There's a  
25 supervisor that keeps records of the training.

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1 BY MR. GOSMAN:  
2 Q. Well, you're a sergeant, right?  
3 A. Yes.  
4 Q. And you'd be a logical person to at least  
5 know who is responsible for keeping records of the  
6 training, correct?  
7 MS. WESTBY: Object to the form of the  
8 question, Jeff. This is becoming fairly argumentative  
9 and a little over the top.  
10 MR. GOSMAN: Okay. All right. I'll keep  
11 that in mind.  
12 BY MR. GOSMAN:  
13 Q. So, my question was: You are a sergeant with  
14 the Powell Police Department, and you should be in a  
15 position to at least know who keeps track of these  
16 records, correct?  
17 A. I know who keeps records.  
18 Q. Who is it?  
19 A. Up until July of this year it was  
20 Sergeant Eckerdt. And then Sergeant Chretien took it  
21 over in July of this year.  
22 Q. All right. And so has Sergeant Eckerdt been  
23 responsible for keeping records of these trainings that  
24 you talked about, and specifically room entry at the  
25 old high school and the new high school and in an

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1 abandoned house and so on and so forth?  
2 MS. WESTBY: Object to the form of the  
3 question.  
4 MR. THOMPSON: Join.  
5 THE WITNESS: As far as I know.  
6 BY MR. GOSMAN:  
7 Q. And I suppose that Chief Feathers would also  
8 be aware of his responsibilities in this regard?  
9 MR. THOMPSON: Objection as to form.  
10 MS. WESTBY: Same objection.  
11 THE WITNESS: That the Chief would know what  
12 the sergeant's duties are?  
13 BY MR. GOSMAN:  
14 Q. That the chief would know if the sergeant's  
15 duties specifically included keeping records of these  
16 training programs?  
17 A. I'm assuming the chief would know, yes.  
18 Q. When you say that the team meets, which team  
19 are you referring to?  
20 A. The team is every officer of the Powell  
21 Police Department.  
22 Q. Okay. Does the Powell Police Department have  
23 a, quote, unquote, special operations team?  
24 A. No.  
25 Q. Does the Powell Police Department train as a

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1 team on a regular basis to perform dynamic entry?  
2 A. Yes.  
3 Q. Where are the records for that training,  
4 Sergeant?  
5 A. I think I answered that I don't know.  
6 Q. Are there records for that training?  
7 A. I don't know. I don't keep the records.  
8 There should be.  
9 Q. With regard to these meetings that we've been  
10 talking about, these training sessions, have you  
11 observed all or nearly all of the Powell Police  
12 Department officers at these trainings?  
13 MR. THOMPSON: Objection as to form.  
14 MS. WESTBY: Join.  
15 THE WITNESS: At one time or another every  
16 officer has attended the trainings.  
17 BY MR. GOSMAN:  
18 Q. Over a period of how many years?  
19 A. Since I started here in 1995.  
20 Q. Do you know the difference between a SWAT  
21 team and a group of officers who get together to  
22 perform a dynamic entry such as the one that was  
23 performed at the Wachsmuth residence?  
24 MS. WESTBY: Object to the form of the  
25 question.

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1 MR. THOMPSON: Join.  
2 THE WITNESS: We don't have a SWAT team. So  
3 I guess that would put us in the group of the officers  
4 that get together to perform a dynamic entry.  
5 BY MR. GOSMAN:  
6 Q. Okay. Do you know what a SWAT team is?  
7 A. Yes.  
8 Q. What's the difference between a SWAT team and  
9 the group that assembled that night to perform the  
10 Wachsmuth entry?  
11 MS. WESTBY: Object to the form of the  
12 question.  
13 MR. THOMPSON: Join.  
14 BY MR. GOSMAN:  
15 Q. Based on what you know.  
16 A. A SWAT team is a specialized unit that  
17 doesn't do anything but serve warrants and make  
18 entries. They are a dedicated team that that's their  
19 sole function in the police department.  
20 Q. How about a special operations team, do you  
21 understand the difference between a special operations  
22 team and a SWAT team?  
23 MS. WESTBY: Object to the form of the  
24 question.  
25 MR. THOMPSON: Join.

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1 THE WITNESS: I don't know what a special  
2 operations team is.  
3 BY MR. GOSMAN:  
4 Q. Is there a SWAT team in Park County?  
5 A. I believe the sheriff's department has one.  
6 Q. Do you know if the sheriff's department was  
7 consulted on the evening of the 14th of November, 2009?  
8 A. Yes, I do.  
9 Q. And they were, correct?  
10 A. Yeah.  
11 Q. And were they consulted, in part, for their  
12 participation and their expertise as a SWAT team?  
13 A. I was told by the commander of the SWAT team  
14 that since it was in the city, they were going home.  
15 Q. That wasn't my question at all, Officer.  
16 My question was: Were they consulted based  
17 on their expertise?  
18 A. Well, I couldn't consult them if they went  
19 home.  
20 Q. Well, actually, you were consulting them,  
21 though, because Lt. Patterson had been communicating  
22 with Officer Miner and you that evening; isn't that --  
23 MS. WESTBY: Objection to the form of the  
24 question.  
25 MR. THOMPSON: Join.

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1 THE WITNESS: I talked to him on the phone  
2 when he told me he was going home.  
3 BY MR. GOSMAN:  
4 Q. And did Officer Miner consult with  
5 Lt. Patterson?  
6 MS. WESTBY: Object to the form of the  
7 question.  
8 THE WITNESS: Officer Miner was with  
9 Lt. Patterson at the Park County Annex.  
10 BY MR. GOSMAN:  
11 Q. And the Park County SWAT team was invited to  
12 participate or direct this operation, was it not?  
13 A. Not by me.  
14 Q. Was it?  
15 A. I don't know what Officer Miner talked about.  
16 I wasn't there.  
17 Q. And you still don't know to this day whether  
18 the Park County SWAT team was asked to participate in  
19 this warrant service?  
20 MR. THOMPSON: Objection as to form.  
21 MS. WESTBY: Join.  
22 THE WITNESS: All I can tell you is he called  
23 me and said he talked to the sheriff's department.  
24 Since it was inside the city limits, they weren't going  
25 to be involved. They were going home.

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1 BY MR. GOSMAN:  
2 Q. Does the City of Powell have an agreement  
3 with any law enforcement agency to provide SWAT  
4 support?  
5 A. We have a mutual aid agreement with Park  
6 County and Cody PD, I believe.  
7 Q. Okay.  
8 A. I don't know if it has anything to do with  
9 the SWAT.  
10 Q. Is it in writing? It's a mutual agreement?  
11 A. I don't handle that, so -- that's one of  
12 Chief Feathers' duties. So I believe there's something  
13 in writing.  
14 Q. Does the City of Powell, as far as you know,  
15 have a specially trained unit for narcotics  
16 investigation or felony apprehension?  
17 A. A special unit?  
18 Q. Yes, a specially trained unit.  
19 A. Not a unit. We have officers that have been  
20 trained in that.  
21 Q. Does the City of Powell have a P.I.E.R.  
22 trained response team?  
23 A. The Powell Police Department has officers  
24 that have been through the P.I.E.R. training.  
25 Q. Were you involved in the selection of the

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1 officers for the service of the Wachsmuth warrant?  
2 A. Yes.  
3 Q. Let's go ahead and talk about the evening of  
4 the 24th of November, 2009  
5 When did you first become aware that a  
6 warrant might be obtained in the Wachsmuth case?  
7 A. When I first became aware of the incident and  
8 the warrant are two different things. I first became  
9 aware of the incident of the reported grow operation  
10 sometime right around the beginning of my shift, which  
11 would have been at 2:00 in the afternoon.  
12 Q. All right. And who did you learn this  
13 information from?  
14 A. Officer Miner.  
15 Q. And what did he tell you?  
16 A. That he had information on a grow operation  
17 in Powell.  
18 Q. Okay. Did he tell you where he got the  
19 information?  
20 A. Yes.  
21 Q. What did he say?  
22 A. He got it from a confidential informant.  
23 Q. Did you know the confidential informant?  
24 A. Personally?  
25 Q. Yes.

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1 A. No.  
2 Q. Had you heard of him before?  
3 MS. WESTBY: And before we go further into  
4 this, we're not disclosing the name of the confidential  
5 informant, so just refer to him as the confidential  
6 informant if you know his name.  
7 BY MR. GOSMAN:  
8 Q. Did you know of him before?  
9 A. I believe I'd heard his name before.  
10 Q. In what regard?  
11 A. General police work.  
12 Q. Did you know that he had an extensive  
13 criminal record?  
14 A. No.  
15 Q. Did you know that he was being investigated  
16 that day for felony possession and delivery and  
17 manufacture of methamphetamine?  
18 MS. WESTBY: Object to the form of the  
19 question. Misstates the testimony or records.  
20 MR. THOMPSON: Join.  
21 THE WITNESS: Being investigated at that  
22 moment?  
23 BY MR. GOSMAN:  
24 Q. Yes.  
25 A. I have no idea if someone else was

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1 investigating, no.  
2 Q. Who would it have been?  
3 MS. WESTBY: Object to the form of the  
4 question.  
5 MR. THOMPSON: Join.  
6 THE WITNESS: I have no idea who would have  
7 been investigating him.  
8 BY MR. GOSMAN:  
9 Q. Well, it would have been somebody that was  
10 involved in narcotics, wouldn't it?  
11 MR. THOMPSON: Objection as to form.  
12 THE WITNESS: Not necessarily.  
13 (Exhibit 26 identified)  
14 BY MR. GOSMAN:  
15 Q. All right. I want you to go ahead and take a  
16 look at Exhibit 26. And I want you to go to page 5 of  
17 this report. And if you could, there -- at the very  
18 last entry on 2/24 of '09, there is an acronym. It  
19 says RP. Do you know what RP means?  
20 A. Yes.  
21 Q. What does it mean?  
22 A. Reporting party.  
23 Q. Reporting party.  
24 And then next to that it's the Powell Police  
25 Department.

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1 MS. WESTBY: Jeff, object to the form of the  
2 question. This exhibit violates the Court's ruling, so  
3 I don't know --  
4 MR. GOSMAN: No, this exhibit does not  
5 violate any court ruling. This exhibit was produced by  
6 me months before the Court even ventured into the area.  
7 MS. WESTBY: Please be professional.  
8 MR. GOSMAN: Yes --  
9 MR. THOMPSON: And, Counsel, for the record,  
10 I think what the Court's -- we can pull it up -- but I  
11 believe what the Court's ruling was is that the  
12 identity of the confidential informant not be  
13 disclosed.  
14 MR. GOSMAN: All right. That's fine, and  
15 I'll agree with that. I won't agree with it, but I'm  
16 willing to work on this assumption to get this  
17 deposition done.  
18 MS. WESTBY: Then this exhibit is part of the  
19 deposition. If you're planning on sealing this  
20 deposition, it needs to be --  
21 MR. GOSMAN: We can certainly seal this  
22 exhibit. And I'd agree to that right now.  
23 MR. THOMPSON: Okay.  
24 MR. GOSMAN: Okay. So Exhibit 26 will be  
25 sealed.



<p>ALAN KENT - November 22, 2010 Direct Examination by Mr. Gosman</p> <p>Page 57</p> <p>1 BY MR. GOSMAN: 2 Q. Do you agree with me that on the 24th of 3 February, 2009, there is a reference to the Powell 4 Police Department either filing charges or referring 5 charges or something with regard to this confidential 6 informant for the manufacture, delivery, and possession 7 of methamphetamine? 8 A. Well, actually, what this is is this is 9 the -- would be -- Case 09-223 is the Wachsmuth case. 10 He was the reporting party. 11 Q. Okay. All right. Very good. So how did we 12 get meth manufacture, delivery, and possession out of 13 growing a couple of marijuana plants? 14 MR. THOMPSON: Object to the form of the 15 question. 16 MS. WESTBY: Join. 17 MR. THOMPSON: Go ahead. 18 THE WITNESS: Part of that may be the way 19 it's listed in our recordkeeping system. That 20 35-7-1031 is a fairly large state statute that 21 encompasses a whole different range of narcotics, 22 drugs, controlled substances. 23 BY MR. GOSMAN: 24 Q. And what is the entry just above that? 25 It's -- under the "Nature" column, it has an S. Can</p>	<p>ALAN KENT - November 22, 2010 Direct Examination by Mr. Gosman</p> <p>Page 59</p> <p>1 BY MR. GOSMAN: 2 Q. Would this document contain the same 3 information that a criminal report would contain if it 4 were run on this individual? 5 A. What do you mean by a criminal report? You 6 mean criminal history? 7 Q. Yes. 8 A. No. 9 Q. What would be the difference? 10 A. Criminal history would show somebody that was 11 charged with a crime and convicted. If you go through 12 this -- like right above the one you were talking about 13 with the meth, manufacture. The one right above it, 14 Powell Police Department, it says S for suspect. If 15 they are arrested for it, it would be SA, subject 16 arrested. And there wouldn't be any dispositions in 17 this. 18 Q. What does the letter M mean? 19 A. Mentioned. 20 Q. Mentioned. How about W? 21 A. Witness. 22 Q. And S is suspect? 23 A. Yes. 24 Q. And what does CHG mean? 25 A. Change.</p>
<p>ALAN KENT - November 22, 2010 Direct Examination by Mr. Gosman</p> <p>Page 58</p> <p>1 you tell me what that is? 2 A. Suspect. 3 Q. And do you know what those charges, 4 12-6-101-a, 12-6-101-b -- 5 A. Those are underage drinking offenses. 6 Q. And on 2/18 of '09 there was apparently a 7 warrant that was issued. 8 A. Appears to be a Cody PD warrant. 9 Q. Okay. And why don't you take just a minute 10 and go ahead and go through this. And I'm going to ask 11 you some questions about this man's criminal record. 12 And I'll go ahead and start with the questions, and 13 then you can -- we'll see if we can get together here 14 on where I'm referring to. 15 MS. WESTBY: Object to the form of the 16 question, your use of the word criminal record. 17 MR. GOSMAN: Okay. Thank you. 18 BY MR. GOSMAN: 19 Q. It's the person record, is it not? This 20 document is actually called a person record? 21 A. Yeah, it appears to be a Cody Police 22 Department person record. 23 MS. WESTBY: And, again, it's out of the Cody 24 Police Department. 25</p>	<p>ALAN KENT - November 22, 2010 Direct Examination by Mr. Gosman</p> <p>Page 60</p> <p>1 BY MR. GOSMAN: 2 Q. Okay. Do you know whether this suspect had 3 any warrants out for his arrest at the time he was 4 providing information in the Wachsmuth case -- 5 A. No. 6 Q. This confidential informant? 7 A. I don't know. 8 Q. You don't know that? 9 A. I don't know. 10 Q. Would this document provide that information? 11 A. If he had warrants out? 12 Q. Yes. 13 A. If that's what W-A-R-R means. 14 Q. Okay. Looks like 1/27 he had a warrant for 15 possession of drug -- I don't know whether it's drug 16 paraphernalia or drugs. But there is a reference to a 17 municipal code, I think, though. 18 And on 1/28, there was a warrant for 19 violation of protection order. Do you see that? 20 A. Yes. 21 Q. So there are two warrants that appear to have 22 been outstanding just before he provided testimony in 23 the Wachsmuth case. Would you agree? 24 MS. WESTBY: Object to the form of the 25 question.</p>

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1 MR. THOMPSON: Join.  
2 THE WITNESS: I don't know. One is Cody PD  
3 and the other is Park County SO.  
4 BY MR. GOSMAN:  
5 Q. On 12/27 of 2007, this confidential informant  
6 apparently was mentioned in connection with falsely  
7 reporting a crime.  
8 Would that have shown up on a criminal  
9 history report? This incident?  
10 A. When a criminal history -- you mean through  
11 the national statewide computer?  
12 Q. Yes.  
13 A. No.  
14 Q. And what does W mean again? Witness?  
15 A. Witness.  
16 Q. Were you aware on the evening of the 24th of  
17 February, 2009 whether Josh Bessler had been arrested  
18 and charged with any felony crimes involving  
19 dishonesty, such as forgery --  
20 MR. THOMPSON: Objection as to form.  
21 BY MR. GOSMAN:  
22 Q. -- obtaining property by false pretenses?  
23 MS. WESTBY: Join.  
24 MR. THOMPSON: First of all, it's a violation  
25 of the Court's order.

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1 BY MR. GOSMAN:  
2 Q. Go ahead.  
3 A. What was the question again?  
4 Q. Yeah, were you aware on the 24th of  
5 November -- February 2009, that the confidential  
6 informant had been arrested and charged with felonies  
7 involving dishonesty, such as forgery and obtaining  
8 property by false pretenses?  
9 MR. THOMPSON: Objection as to form.  
10 MS. WESTBY: Join.  
11 THE WITNESS: No.  
12 BY MR. GOSMAN:  
13 Q. Did you recognize the name Bret Wachsmuth  
14 when Officer Miner told you that he was working on a  
15 marijuana grow operation that day?  
16 A. I recognized the last name.  
17 Q. Did you know that he was related to Tom  
18 Wachsmuth?  
19 A. When Officer Miner told me, I did.  
20 Q. Do you know Tom Wachsmuth?  
21 A. Yes.  
22 Q. You know he works for DCI?  
23 A. Yes.  
24 Q. What kind of a relationship did you have with  
25 Tom Wachsmuth at that time?

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1 A. Working relationship. We weren't friends.  
2 Q. Did you have any reason to believe that Tom  
3 Wachsmuth would not fully cooperate with you if he were  
4 asked to assist in serving this warrant?  
5 A. I don't know how to answer that. I guess I  
6 didn't really want to put him in that position.  
7 Q. All right. I'm not interested in that.  
8 though. What I want to know is, was there any reason  
9 why he couldn't have been consulted in terms of his  
10 reliability or his ability to help diffuse the  
11 situation to get Mr. Wachsmuth out of the house without  
12 having to break in the door and enter the home with 11  
13 police officers?  
14 MS. WESTBY: Object to the form of the  
15 question.  
16 MR. THOMPSON: Join.  
17 Go ahead.  
18 THE WITNESS: Was there any reason?  
19 BY MR. GOSMAN:  
20 Q. Yeah.  
21 A. Yeah.  
22 Q. What?  
23 A. That it was his son. I didn't want him to  
24 confuse his job -- or have to choose between his job  
25 and his son.

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1 Q. All right. But that doesn't have anything to  
2 do with whether or not Tom Wachsmuth could have  
3 performed that service, correct?  
4 MS. WESTBY: Object to the form of the  
5 question. Asked and answered.  
6 MR. THOMPSON: Join.  
7 THE WITNESS: I guess he could have.  
8 BY MR. GOSMAN:  
9 Q. There was nothing in his character or your  
10 knowledge of his history that would have led you to  
11 believe that he wasn't capable of doing that or  
12 wouldn't have cooperated fully with you?  
13 A. Not that I was aware of.  
14 Q. After you first spoke with Officer Miner,  
15 what was the next event that occurred that afternoon in  
16 connection with this matter?  
17 A. We had a meeting with Chief Feathers.  
18 Q. What time was that?  
19 A. Within a few minutes after Officer Miner told  
20 me.  
21 Q. All right. And what did you discuss with  
22 Chief Feathers?  
23 A. We informed him what was going on.  
24 Q. And what was that?  
25 A. That we had a suspected grow operation and

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1 that it involved Tom's son.  
2 Q. Did you have a discussion, then, about  
3 whether or not you should involve Tom in trying to  
4 serve this warrant?  
5 A. Not at that point.  
6 Q. What else was discussed with Officer Feathers  
7 at that time?  
8 A. It's Chief Feathers.  
9 Q. Chief Feathers, I'm sorry.  
10 A. Told us we would handle it like we would  
11 handle any other criminal violation.  
12 Q. What did that mean? Did you understand --  
13 A. That we're not going to play favorites.  
14 Q. All right. And have you ever used a dynamic  
15 entry to execute a misdemeanor search warrant before?  
16 MS. WESTBY: Object to the form of the  
17 question.  
18 MR. THOMPSON: Join.  
19 MS. WESTBY: Mistakes the evidence.  
20 THE WITNESS: I've used dynamic entries to  
21 execute search warrants, yes  
22 BY MR. GOSMAN:  
23 Q. In what circumstances?  
24 A. Well, when I was assigned to DCI, we served  
25 search warrants in Lovell, Casper, Riverton -- drug

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1 offenses.  
2 Q. They weren't misdemeanor drug possession  
3 offenses, though, were they?  
4 MS. WESTBY: Object to the form of the  
5 question.  
6 THE WITNESS: At the time we didn't know this  
7 was a misdemeanor.  
8 BY MR. GOSMAN:  
9 Q. You thought this was a felony marijuana grow  
10 operation?  
11 A. Yes.  
12 Q. Based on what?  
13 A. Several things. There's weight. I didn't  
14 realize until later that a grow operation is a  
15 misdemeanor in the state of Wyoming. But if you take  
16 weight, it's a felony, felony possession.  
17 Q. Do you know what the weight is that's  
18 required to upgrade the possession to a felony?  
19 A. Yes.  
20 Q. What is it?  
21 A. Three ounces.  
22 Q. Three ounces.  
23 That doesn't include the roots and the  
24 potting soil, though, does it?  
25 A. It includes the plant, roots and everything.

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1 There's THC in the roots.  
2 Q. And you weren't aware that a marijuana grow  
3 operation was not a felony in Wyoming?  
4 A. Not at the time, no.  
5 Q. But if you had checked the statutes, you  
6 would have discovered that, correct?  
7 A. But if there's more than 3 ounces, it would  
8 have been a felony possession.  
9 (Exhibit 13 identified)  
10 BY MR. GOSMAN:  
11 Q. Well, let's take a look at Exhibit -- I  
12 believe it's 13.  
13 Okay, have you seen this document before?  
14 A. Yes.  
15 Q. Did you assist in its preparation?  
16 A. No.  
17 Q. When did you see it first?  
18 A. When Officer Miner had it signed by  
19 Judge Waters and brought it back to the police  
20 department.  
21 Q. Well, all right. Of course, Judge Walters  
22 (sic) didn't sign the affidavit, correct?  
23 MR. THOMPSON: Waters, I believe he said.  
24 BY MR. GOSMAN:  
25 Q. Waters, I'm sorry.

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1 THE WITNESS: Judge Waters wouldn't have  
2 signed the affidavit, he would have signed the search  
3 warrant.  
4 BY MR. GOSMAN:  
5 Q. All right. So you saw this search and  
6 seizure affidavit when the warrant was returned from  
7 Judge Waters' office?  
8 A. Yes.  
9 Q. Did you look at it?  
10 A. Yes.  
11 Q. And did you notice what the confidential  
12 informant reported to Officer Miner about the marijuana  
13 grow operation in the house?  
14 A. At the time I'm sure I did. I can look  
15 now --  
16 Q. Yeah, go ahead. I think it's actually  
17 probably contained on page -- it's page 4 of the  
18 affidavit.  
19 First question I'd like to ask you is: Is  
20 there any reference in this affidavit that Bret or  
21 Tricia Wachsmuth sold marijuana, ever, or any other  
22 drugs?  
23 A. In this document?  
24 Q. Yes.  
25 A. Not in this one.

<p>ALAN KENT - November 22, 2010 Direct Examination by Mr. Gosman</p> <p>Page 69</p> <p>1 Q. All right. Well, was there ever any evidence 2 that Bret or Tricia Wachsmuth sold marijuana or any 3 other drugs? 4 A. There was evidence they provided it to 5 others, which is a delivery. 6 Q. And where did that evidence come from? 7 A. From the confidential informant. 8 Q. Really? Did you speak to the confidential 9 informant? 10 A. No. 11 Q. Where is that evidence -- 12 MS. WESTBY: Objec to the form of the 13 question. Argumentative. 14 BY MR. GOSMAN: 15 Q. -- that Mr. Wachsmuth provided drugs to other 16 persons? 17 A. If I remember correctly, it's in 18 Officer Miner's report. 19 Q. Well, let's go ahead and take a look at that. 20 A. Where is that at? 21 (Exhibit 20 identified) 22 BY BY MR. GOSMAN: 23 Q. It's Exhibit 20. 24 By the way, did you read -- you did read this 25 report, didn't you; you signed it?</p>	<p>ALAN KENT - November 22, 2010 Direct Examination by Mr. Gosman</p> <p>Page 71</p> <p>1 to another person in a park, that person is guilty of 2 delivery of marijuana? 3 A. Yes. 4 Q. Have you ever charged anybody for that crime? 5 A. Yes. It's a state statute. It's a delivery. 6 Money doesn't have to change hands. 7 Q. All right. Well, you certainly understood 8 that this operation at the Wachsmuths' did not involve 9 the sale of drugs from the home, correct? 10 A. I didn't know that for sure. But, no. 11 Q. You had no reason to believe that that was 12 the case? 13 A. I had no reason to believe it, no. 14 Q. All right. Let's go back to the affidavit, 15 which is Exhibit 13. 16 How many plants are referenced in the 17 affidavit? 18 A. Say that again. 19 Q. How many marijuana plants are referenced in 20 the affidavit? 21 A. I don't believe there's a number given. 22 Q. Let's go to page 4. 23 A. What was the number of the affidavit again, 24 I'm sorry? Thirteen? 25 Q. It's -- yeah, 13.</p>
<p>ALAN KENT - November 22, 2010 Direct Examination by Mr. Gosman</p> <p>Page 70</p> <p>1 A. I approved it, yes. 2 Q. Did you read it? 3 A. Yeah. 4 Q. All right. Where is the reference in there 5 about -- 6 A. "CI-2009-02 has smoked marijuana with Tricia 7 and Bret frequently up until approximately one month 8 ago." 9 Q. Well, how do we know that Bret and Tricia 10 provided it to him or delivered it to him? 11 A. Because he was living there and Bret was 12 growing it in the basement. 13 Q. So that's it, then, huh? That he smoked 14 marijuana with the Wachsmuths? 15 A. Yes. 16 Q. And that's the only evidence that you have 17 that there was delivery of drugs by Tricia and Bret 18 Wachsmuth? 19 MS. WESTBY: Objec to the form of the 20 question. Argumentative. 21 MR. THOMPSON: Join. 22 THE WITNESS: If somebody provides drugs to 23 somebody else, it's a delivery. 24 BY MR. GOSMAN: 25 Q. So if one person passes a marijuana cigarette</p>	<p>ALAN KENT - November 22, 2010 Direct Examination by Mr. Gosman</p> <p>Page 72</p> <p>1 Okay. I'm on page 4 of Exhibit 13, and I'm 2 going to read this to you: "CI has also stated that he 3 has smoked marijuana with both Bret and Tricia on 4 numerous occasions during his stay in the residence." 5 Are you telling me that's your evidence that 6 Bret and Tricia Wachsmuth were delivering drugs to 7 other persons? 8 MS. WESTBY: Object to the form of the 9 question. 10 MR. THOMPSON: Join. 11 THE WITNESS: Yes. 12 BY MR. GOSMAN: 13 Q. All right. That's fine. And then it says: 14 "The CI then stated that when he first moved into the 15 residence, he noticed an already harvested marijuana 16 plant," correct? 17 A. I don't know where you're at. 18 Q. Just the next sentence there on page 4. 19 A. Is it like the -- 20 Q. I'm sorry. It's in the second paragraph. 21 It's towards the bottom of the second paragraph, 22 Sergeant. 23 MR. THOMPSON: Is there a question? 24 BY MR. GOSMAN: 25 Q. Yes. So there is a reference to one</p>

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1 marijuana plant in this affidavit, correct?  
2 A. An already harvested one, yes.  
3 Q. Let's see here.  
4 Okay. And then on page 3 of this affidavit,  
5 there's the statement in the -- it's the second  
6 paragraph of paragraph number four. And it's the last  
7 sentence there: "During December of 2008, CI  
8 discovered approximately six marijuana plants that were  
9 approximately 6 inches tall in the basement of the  
10 residence."  
11 A. Yes.  
12 Q. All right. Do you know of any other evidence  
13 that the confidential informant provided regarding the  
14 amount of marijuana that was in that basement?  
15 A. Other than his statements, no.  
16 Q. All right. Did it appear to you that  
17 Mr. Wachsmuth was growing this marijuana for personal  
18 use --  
19 MS. WESTBY: Object to --  
20 BY MR. GOSMAN:  
21 Q. -- from all the information that you had that  
22 afternoon?  
23 MS. WESTBY: Object to the form of the  
24 question.  
25 MR. THOMPSON: Join.

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1 THE WITNESS: I don't know if there's -- I  
2 don't know how you would tell if somebody was growing  
3 it for themselves or to sell.  
4 BY MR. GOSMAN:  
5 Q. Okay. Well, how about the size of the  
6 operation, Officer?  
7 A. Well, the initial information was that there  
8 was 12 to 15 plants.  
9 Q. Where is that? I'm not doubting it, but just  
10 show me where that is.  
11 A. That's what I recollect that was told to me  
12 by Officer Miner.  
13 Q. See if you can find that in the affidavit.  
14 A. Well, I can't find it there, but I can find  
15 it in his grow log after we served the search warrant,  
16 where it said that he had seedlings plus three mature  
17 plants.  
18 Q. All right. Well, that's something that you  
19 discovered after you reviewed the logs that were taken  
20 in the search of the Wachsmuth residence, correct?  
21 A. Yes. But it confirmed what the CI had told  
22 us.  
23 Q. Well, what the CI told you, at least based on  
24 what Officer Miner says in his affidavit, was that  
25 there was six to eight plants back in December of 2008.

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1 MR. THOMPSON: Objection as to form.  
2 MS. WESTBY: Join.  
3 BY MR. GOSMAN:  
4 Q. Correct?  
5 A. Back in December, yes.  
6 Q. Pardon?  
7 A. Back in December, yes.  
8 Q. Yeah. All right. So what evidence is there  
9 in this affidavit, other than what you remember Miner  
10 telling you -- let's look at the record as it exists.  
11 What evidence is there in this affidavit for  
12 search warrant that there was a large number of  
13 marijuana plants in the Wachsmuth residence that would  
14 lead anyone to believe that maybe he was growing them  
15 for sale, for delivery?  
16 MR. THOMPSON: Objection as to form.  
17 MS. WESTBY: Join.  
18 THE WITNESS: There's no number listed for  
19 the plants that he had currently in his basement.  
20 BY MR. GOSMAN:  
21 Q. And the same is true of Miner's report, isn't  
22 that true? And that's the report that you signed. I  
23 believe it's Exhibit 20.  
24 MR. THOMPSON: Objection as to the form.  
25 MS. WESTBY: Join.

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1 THE WITNESS: The question again, please?  
2 BY MR. GOSMAN:  
3 Q. Yeah. There isn't any evidence in Officer  
4 Miner's report that he was growing marijuana plants in  
5 a sufficient quantity that would indicate that he was  
6 growing them for sale?  
7 A. Not for sale, no.  
8 MR. THOMPSON: Objection as to form.  
9 BY MR. GOSMAN:  
10 Q. So the objective evidence was that this was a  
11 small marijuana grow operation in Bret Wachsmuth's  
12 basement, correct?  
13 MR. THOMPSON: Objection as to form.  
14 MS. WESTBY: Join.  
15 THE WITNESS: I don't know if you'd define it  
16 small if there was 11 to 15 plants.  
17 BY MR. GOSMAN:  
18 Q. How many plants were there? Hold it, back up  
19 just a second. I'll strike that.  
20 I think you just said 11 to 15 plants. Where  
21 did that number come from, Officer?  
22 A. I told you that's what Officer Miner had told  
23 me.  
24 Q. That's what Officer Miner told you.  
25 A. Yes.

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1 Q. Did you write that down in any reports that  
2 you filed in this case?  
3 A. I didn't file any reports in this case.  
4 Q. Did you call out to Officer Miner when you  
5 approved his report, which is Exhibit 20, that, in  
6 fact, he had told you that there were 11 to 15 plants  
7 in the house?  
8 A. He didn't put --  
9 MS. WESTBY: Object to the form of the  
10 question.  
11 THE WITNESS: He didn't put a number of  
12 plants in his report.  
13 BY MR. GOSMAN:  
14 Q. He put a number of plants in the affidavit  
15 for the search warrant, did he not?  
16 A. From December. This is now February.  
17 Q. Well, and certainly, if there were -- if  
18 there was evidence of 11 to 15 plants, that would have  
19 been pertinent to the affidavit for the search warrant,  
20 correct?  
21 MR. THOMPSON: Objection as to form.  
22 MS. WESTBY: Join.  
23 THE WITNESS: The evidence came from the --  
24 what the CI had told Miner.  
25

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1 BY MR. GOSMAN:  
2 Q. My question was that if he had, in fact,  
3 heard from the confidential informant that there were  
4 currently in the house 11 to 15 marijuana plants, that  
5 would certainly have been pertinent to the affidavit  
6 for the search warrant, correct?  
7 MR. THOMPSON: Objection as to form.  
8 MS. WESTBY: Join.  
9 THE WITNESS: Not necessarily.  
10 BY MR. GOSMAN:  
11 Q. Well, it's not in there; isn't that true?  
12 A. It's not in there, but not necessarily --  
13 it's a grow operation. I mean, there's not a  
14 difference defined by law for a grow operation between  
15 1 and 20.  
16 Q. But he did place in his affidavit that in  
17 December of 2008 there were six to eight -- there were  
18 six -- I believe it was six plants that were in the  
19 residence, correct?  
20 A. Yes.  
21 Q. And there's no reference to any of the number  
22 of plants that the confidential informant told him  
23 about currently on the date that the warrant was  
24 issued, correct?  
25 A. Not on that date, no.

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1 Q. All right. Were you -- no, you weren't. You  
2 were elk hunting, I think, when we took Officer Miner's  
3 deposition. You didn't --  
4 A. No, I was in North Carolina.  
5 Q. Okay. Do you remember where it was that  
6 Miner -- when and where it was that Miner told you that  
7 there were 11 to 15 plants in the Wachsmuth residence,  
8 based on what he'd heard from the confidential  
9 informant?  
10 A. I believe it was in the garage.  
11 Q. In the garage?  
12 A. At the police department.  
13 Q. All right. Well, Officer, did you make a  
14 judgment that afternoon about whether or not you were  
15 dealing with a felony drug grow operation?  
16 A. I made a judgment we were dealing with a  
17 felony.  
18 Q. You did?  
19 A. Yes.  
20 Q. All right. And that was based on the  
21 statement that Miner told you that there were 11 to 15  
22 plants in the home?  
23 A. That was based on the statement that there  
24 was a grow operation, yes.  
25 Q. And you're misunderstanding that the grow

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1 operation was a felony?  
2 MR. THOMPSON: Objection as to form.  
3 Go ahead.  
4 THE WITNESS: At the time, I didn't know that  
5 all grow operations are misdemeanors, no.  
6 BY MR. GOSMAN:  
7 Q. It's a felony to sell marijuana, though,  
8 isn't it?  
9 A. Yes.  
10 Q. And there was no evidence that Mr. Wachsmuth  
11 was engaged in selling marijuana, correct?  
12 MR. THOMPSON: Objection as to form.  
13 MS. WESTBY: Join.  
14 THE WITNESS: Not that I knew of.  
15 BY MR. GOSMAN:  
16 Q. All right. So you met with Chief Feathers  
17 and Miner shortly after you first talked with Officer  
18 Miner about the developing information on the Wachsmuth  
19 marijuana grow operation, correct?  
20 A. Yes.  
21 Q. And how long did that meeting last?  
22 A. I have no idea. It wasn't very long.  
23 Q. Was there any discussion at that time about  
24 the possibility of using a dynamic entry to serve the  
25 warrant?

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1 A. We didn't even have a warrant then, so there  
2 was no discussion about that  
3 Q. All right. So what happened next?  
4 A. Officer Miner went out and met with the  
5 county attorney at the annex  
6 Q. Okay. And did he take the confidential  
7 informant with him?  
8 A. I don't know if they rode together, but  
9 eventually the confidential informant was there with  
10 him.  
11 Q. Okay. And do you know if Lt. Patterson was  
12 called to the office where Miner met with the  
13 confidential informant and the prosecutor?  
14 A. I don't know how he got there, but I knew  
15 eventually he was involved with the interview and  
16 the -- and writing the affidavit.  
17 Q. Was Miner reporting to you that afternoon?  
18 A. He was checking in periodically.  
19 Q. Okay. Were you his direct report that  
20 afternoon? I mean, was he reporting to you, as his  
21 sergeant, the progress of this drug investigation?  
22 A. Yes.  
23 Q. All right. And did you ask him about the  
24 communications he was having with Lt. Patterson?  
25 A. He was keeping me informed of what was going

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1 on.  
2 Q. Well, what did he say?  
3 A. That Lt. Patterson, with his experience, was  
4 helping write the affidavit and interview the  
5 confidential informant.  
6 Q. He didn't tell you that he'd invited  
7 Officer Patterson to participate with his SWAT team?  
8 A. I don't recall that, no.  
9 Q. But you knew that because Officer Patterson  
10 said he wasn't going to do it, correct?  
11 A. When we talked on the phone, he said -- yeah,  
12 he said he was going home.  
13 Q. When did you speak with Officer Patterson --  
14 Lt. Patterson?  
15 A. I don't know the exact time of day. I mean,  
16 it was later in the evening, I think.  
17 Q. Was it before dark?  
18 A. I don't recall. I mean, it was February, so  
19 it gets dark fairly early.  
20 Q. You only spoke to Lt. Patterson one time?  
21 A. That I remember.  
22 Q. And did you know at that time that you spoke  
23 with Lt. Patterson that Officer Miner at least was  
24 planning a SWAT-type entry into the Wachsmuth home?  
25 MS. WESTBY: Object to the form of the

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1 question.  
2 MR. THOMPSON: Join.  
3 THE WITNESS: It wasn't Officer Miner's  
4 decision to do a SWAT-type entry.  
5 BY MR. GOSMAN:  
6 Q. Okay. But that wasn't the question I asked.  
7 Did you know that he was considering that at  
8 that time?  
9 A. No.  
10 Q. Why would Lt. Patterson have been called in  
11 and have told you that his SWAT team was not going to  
12 be involved if Officer Miner hadn't made some -- drawn  
13 some conclusions about the use of a SWAT team in  
14 connection with this investigation?  
15 MS. WESTBY: Object to the form of the  
16 question. Misstates the testimony.  
17 MR. THOMPSON: Join.  
18 THE WITNESS: I don't know what they talked  
19 about. I wasn't there.  
20 BY MR. GOSMAN:  
21 Q. All right. When did you first talk with  
22 Officer Miner about the use of a SWAT-type entry into  
23 the Wachsmuth home?  
24 A. I never talked to him about a SWAT-type  
25 entry.

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1 Q. What did you talk to him about in relation to  
2 the entry?  
3 A. I don't think I talked to him about any of  
4 it.  
5 Q. Officer Miner?  
6 A. Yeah.  
7 Q. Well, you didn't just show up at the meeting  
8 later that evening where all the officers were  
9 assembled and learn for the first time that  
10 Officer Chretien had put together a plan for a dynamic  
11 entry, did you?  
12 A. No. Sergeant Chretien was called in to plan  
13 the entry.  
14 Q. Did you know about that?  
15 A. Yes.  
16 Q. And when did that happen?  
17 A. I don't have a time. I mean, he was one of  
18 the first phone calls I made.  
19 Q. Did you -- so you called Sergeant Chretien?  
20 A. Yeah.  
21 Q. And did you tell him that you wanted him to  
22 plan a dynamic entry into the Wachsmuth home?  
23 A. I told him, after conferring with the Chief,  
24 that we had a search warrant to serve and that he  
25 needed to put a plan together. Whether it was tactical

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1 or not was his call.  
2 Q. All right. So at this point in time that  
3 you'd spoken with Sergeant Chretien, you've talked  
4 again with Chief Feathers?  
5 A. I talked to Chief Feathers through the course  
6 of the whole evening by phone or in person when he was  
7 still at the office.  
8 Q. And did you discuss with Chief Feathers the  
9 use of a dynamic entry in this case before you called  
10 Chretien?  
11 A. Chief Feathers and I talked about all kinds  
12 of options.  
13 Q. And that would be one of them, correct?  
14 A. Yes.  
15 Q. And why were you talking about a dynamic  
16 entry into the Wachsmuth home based on the information  
17 you had at that time?  
18 A. Based on the information we had from Bret  
19 that he was paranoid, he was always looking out the  
20 window. There was guns in the house. He carried a  
21 gun. Also that we had information he was getting pills  
22 from his mother-in-law, so I didn't know if he was  
23 going to be under the influence of something. Plus the  
24 part that scared me the most was that he knew we were  
25 coming.

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1 Q. Why did that scare you so bad?  
2 A. To know that we're going to go break down the  
3 door of somebody's house and they know we're coming?  
4 Q. Well, I think we've got an assumption going  
5 on there and that is that you were going to break down  
6 the door. Why did you feel that you had to break down  
7 the door?  
8 A. So that might have been a bad choice of  
9 words, but to do anything when they know we're coming  
10 isn't a good thing.  
11 Q. Well, this was a knock-and-announce warrant,  
12 correct?  
13 A. Yes.  
14 Q. And in a knock-and-announce warrant, you  
15 knock and announce your presence before you enter the  
16 home, correct?  
17 MS. WESTBY: Object to the form of the  
18 question.  
19 THE WITNESS: Yes.  
20 BY MR. GOSMAN:  
21 Q. So even if everything had gone according to  
22 plan, Bret Wachsmuth would have known you were coming  
23 before he opened the door, correct?  
24 MR. THOMPSON: Objection as to form.  
25 MS. WESTBY: Join.

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1 THE WITNESS: He would have had a few  
2 moments' notice, but not several hours like he had.  
3 BY MR. GOSMAN:  
4 Q. Several hours like he had?  
5 A. Yes.  
6 Q. So when did you first learn that the  
7 confidential informant had communicated with Bret  
8 Wachsmuth?  
9 A. He had told Officer Miner and Officer Miner  
10 told me.  
11 Q. When?  
12 A. One of the points we met during the afternoon  
13 or communicated during that -- the afternoon.  
14 Q. Okay. You considered that important  
15 information, correct?  
16 A. Yes.  
17 Q. And certainly, that would have been  
18 information that would have been important for the --  
19 in obtaining the search warrant, correct?  
20 MS. WESTBY: Object to the form of the  
21 question.  
22 MR. THOMPSON: Join.  
23 THE WITNESS: I didn't write the search  
24 warrant.  
25

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1 BY MR. GOSMAN:  
2 Q. Well, go to Exhibit 13 and tell me if  
3 Officer Miner says anything in there about the  
4 confidential informant alerting Bret Wachsmuth that you  
5 were coming.  
6 A. I don't think it's in there.  
7 Q. It's not in any -- is it in any of the  
8 reports?  
9 A. Yeah. Yes.  
10 Q. And let's go ahead and turn to Exhibit 20.  
11 This document was prepared by Chad Miner on  
12 the 25th, correct?  
13 A. Yes.  
14 Q. And that was a day after the incident,  
15 correct?  
16 A. Yes.  
17 Q. And that was also after Bret Wachsmuth had  
18 been interviewed by Officer Brown and whoever else was  
19 with him that day, correct?  
20 A. Yes.  
21 Q. Do you know if Sergeant Chretien was alerted  
22 to the fact that the -- as you allege, the confidential  
23 informant informed Officer Miner that he had contacted  
24 Bret Wachsmuth and told him that you were coming?  
25 A. I would have told him, yeah.



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1 Q. Well, I'm not interested really in what you  
2 would have told him. If you remember telling him that,  
3 fine. And if you don't remember telling him that,  
4 that's fine, too.  
5 Do you remember telling him that?  
6 A. I don't remember specifically. I told him  
7 all the information that I had  
8 Q. And he was charged with devising the entry  
9 plan based on the information that you gave him,  
10 correct?  
11 A. Yes.  
12 Q. Did he speak with Officer Miner, do you know?  
13 A. Officer Miner, when he returned from Cody,  
14 came into the basement and spoke with Sergeant  
15 Chretien, yes.  
16 Q. And what time was that?  
17 A. When he got back from Cody. I don't know the  
18 time.  
19 Q. And do you know whether Officer Chretien was  
20 aware that the confidential informant had spoken to  
21 Bret Wachsmuth earlier in the day and told him you were  
22 coming?  
23 MS. WESTBY: Object to the form.  
24 MR. THOMPSON: Join.  
25 THE WITNESS: I told Sergeant Chretien all

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1 the information I had. So I would have told him.  
2 BY MR. GOSMAN:  
3 Q. To the best of your recollection --  
4 A. Yeah.  
5 Q. -- you would have told him that?  
6 A. Yes.  
7 (Exhibit 16 identified)  
8 BY MR. GOSMAN:  
9 Q. All right. Well, let's take a look at his  
10 report, which is Exhibit 16. Want you to see if you  
11 can find any reference in that report to this  
12 knowledge.  
13 A. I don't see it.  
14 (Exhibit 10 identified)  
15 BY MR. GOSMAN:  
16 Q. Let's take a quick look at Exhibit 10. Do  
17 you know what this document is?  
18 A. Yes. It's notes that were taken.  
19 Q. And these were notes that were  
20 taken documenting the entry plan, correct?  
21 A. Yes.  
22 Q. All right. Is there any reference in this  
23 document to the confidential informant alerting Bret  
24 Wachsmuth, allegedly, that he had turned him in?  
25 A. No, but I don't see any reference to any of

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1 the other concerns either.  
2 Q. Well, it does say handguns loaded everywhere  
3 in the house, doesn't it?  
4 A. That's one of the concerns we had, yes.  
5 Q. Okay. So, Officer, when were the other  
6 police officers of the Powell Police Department  
7 contacted to come down to the police station?  
8 A. Sometime during that evening before we served  
9 the search warrant.  
10 Q. All right. And was that done after  
11 Sergeant Chretien had devised the plan to conduct the  
12 entry into the home?  
13 A. I think they were arriving at roughly the  
14 same times that he was working on the plan.  
15 Q. All right. Well, let's go back for a minute.  
16 You instructed Officer Chretien to devise the plan,  
17 correct?  
18 A. I asked him to, yes.  
19 Q. Asked him to, all right.  
20 And that was also based on information that  
21 you had discussed with Chief Feathers, correct?  
22 A. Yes.  
23 Q. And so Chief Feathers was aware that  
24 Officer Chretien was being asked to devise a plan for  
25 entry into the Wachsmuth residence, correct?

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1 A. Yes.  
2 Q. And when did you speak to Chretien again --  
3 next?  
4 A. I spoke to him off and on through the whole  
5 evening.  
6 Q. All right. And after you had made this -- or  
7 given him this charge and asked him to prepare a plan,  
8 when did you learn that he had prepared a plan?  
9 A. When he was explaining to everybody in the  
10 basement.  
11 Q. You didn't know before then what his plan  
12 was?  
13 A. I don't think the specifics were worked out.  
14 Q. Well, all right. But did you know that he  
15 was planning a dynamic entry into the Wachsmuth home?  
16 A. I knew he was planning an entry, yes.  
17 Q. Well, you've been talking to him through the  
18 evening, as you say, correct, before you actually met  
19 with him at the police station?  
20 A. Yes.  
21 Q. And you're telling me that you didn't know he  
22 was planning a dynamic entry?  
23 A. I knew he was planning an entry. And at the  
24 end I knew it was a dynamic entry. When the plans were  
25 finalized.

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1 Q. Did you communicate with Chief Feathers  
2 regarding the finalized plans that evening?  
3 A. Yes.  
4 Q. And what did you tell him?  
5 A. I don't recall specifically. But I laid out  
6 what we were going to do.  
7 Q. All right. And was that -- what you laid out  
8 for him, was that the information that you had received  
9 from Chretien as to what the plan would be and how it  
10 would proceed?  
11 A. Yes.  
12 Q. Did he have a veto power over the execution  
13 of this plan?  
14 MR. THOMPSON: Objection as to form.  
15 MS. WESTBY: Join.  
16 THE WITNESS: Yes.  
17 BY MR. GOSMAN:  
18 Q. Did he specifically approve this plan after  
19 you explained it to him?  
20 A. Yes.  
21 Q. When did you visit with him about this and  
22 attain his approval?  
23 A. Sometime during the evening before the  
24 warrant was served.  
25 Q. Was it before the meeting with the police

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1 officers?  
2 A. It was ongoing through the whole evening. I  
3 was in communication --  
4 Q. Yeah, but --  
5 A. -- with the chief.  
6 Q. -- I didn't ask you that question.  
7 MS. WESTBY: You need to let him finish his  
8 answer.  
9 BY MR. GOSMAN:  
10 Q. Did you communicate with Chief Feathers about  
11 the elements of the plan before the meeting where the  
12 police officers were all called down to the station?  
13 A. Yes.  
14 Q. Let's go ahead and take a look at Exhibit 10  
15 for a moment. There is a list of officers on the upper  
16 left-hand corner and a description of their positions  
17 in this warrant service, the roles that they were going  
18 to play.  
19 Is that list accurate as far as you remember  
20 it?  
21 A. As far as I remember it.  
22 Q. Let me back up for just a second and ask you  
23 this: Were you in communication with Sergeant Eckerdt  
24 that evening before you met at the police station?  
25 A. Before we met downstairs?

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1 Q. Yes.  
2 A. When I called him in.  
3 Q. And that was before -- that was to let him  
4 know that you wanted him to come down to the station?  
5 A. Yes.  
6 Q. So Officer Eckerdt wasn't involved in the  
7 planning of the search warrant, correct?  
8 A. Well, I think he was involved.  
9 Q. How?  
10 A. Well, I know for one thing, he informed us  
11 that there was a picture on the social networking site  
12 of Bret Wachsmuth with a M16, M4 military type and  
13 wearing a bullet resistant vest. I remember him making  
14 us aware of that.  
15 Q. Okay. And did you think that was  
16 significant?  
17 A. Yes.  
18 Q. All right. And what did he say about it?  
19 A. That he saw it on the website. And he talked  
20 to Tom about it that -- that it probably wasn't  
21 appropriate for a drug agent's son to be on a website  
22 with that. And I think it was taken down.  
23 Q. Do you remember him telling you that?  
24 A. Yes.  
25 Q. All right. And I think you just told me a

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1 minute ago that you first talked to Sergeant Eckerdt  
2 when you called him to tell him to come down to the  
3 police station, correct?  
4 A. Yes.  
5 Q. All right. And so you didn't actually visit  
6 with Sergeant Eckerdt about this photo until after he  
7 arrived at the police station that night, along with  
8 the other officers, correct?  
9 A. Correct.  
10 Q. Hadn't you already made up your mind that you  
11 were going to do a dynamic entry at that point?  
12 A. No.  
13 MR. THOMPSON: Objection as to form.  
14 BY MR. GOSMAN:  
15 Q. What were the other options that were  
16 considered?  
17 A. The chief and I talked about getting Tom  
18 involved.  
19 Q. And that was earlier in the afternoon,  
20 correct?  
21 A. It was ongoing through the whole evening.  
22 Q. Well, you first started talking about that  
23 earlier in the afternoon, correct?  
24 A. When we first started, but it was ongoing  
25 through the whole evening.

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1 Q. All right. You discussed with Chief Feathers  
2 earlier in the afternoon the possibility of getting Tom  
3 Wachsmuth involved in the case, correct?  
4 A. Yes, along with other options.  
5 Q. And he told you that he didn't want this case  
6 to be treated any differently than any other case at  
7 that time, correct?  
8 A. Well, I know that he had conversations with  
9 Tom's boss, Steve Hermann about it. And they made the  
10 decision that Tom wasn't going to be involved.  
11 Q. And he told you that?  
12 A. Yes.  
13 Q. All right. And did he tell you that in the  
14 afternoon?  
15 A. He told me that some point during the  
16 evening -- afternoon, evening -- somewhere in there  
17 after he contacted Agent Hermann.  
18 Q. Okay. Who is Agent Hermann?  
19 A. He's the agent in charge -- he's the  
20 northwest enforcement team leader for the local DCI  
21 office. He oversees this office and Riverton and Park,  
22 Washakie, Big Horn and Hot Springs County and Fremont  
23 County.  
24 Q. What's his name, again?  
25 A. Steve Hermann.

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1 Q. Okay. Was he Bret Wachsmuth's supervisor, as  
2 you know?  
3 MR. THOMPSON: You mean Tom Wachsmuth?  
4 BY MR. GOSMAN:  
5 Q. I'm sorry, Tom Wachsmuth's.  
6 A. He is Tom Wachsmuth's supervisor.  
7 Q. Okay. So what other alternatives were  
8 discussed that night?  
9 A. There was an alternative of maybe getting him  
10 out of the house on the pretense of having somebody go  
11 meet him for a drink, dinner  
12 Q. Who was this conversation with?  
13 A. The chief.  
14 Q. Okay.  
15 A. There was talk of knock and talk.  
16 Q. Those all sound pretty reasonable to me.  
17 Why weren't any of those measures attempted  
18 first before we had the door rammed in and the dynamic  
19 entry?  
20 A. I think it was the -- the thing with Tom, he  
21 wasn't involved because that was the decision made by  
22 my boss and his boss.  
23 The knock and talk, I remember talking to the  
24 chief about that, where if we sent somebody to the door  
25 and a guy inside may be high, carrying a gun, is a

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1 peeper, paranoid, has mental issues, it may be tough to  
2 find a volunteer to go knock on the door, and I agreed  
3 with that.  
4 Q. All right. Well, let's stop there for a  
5 second.  
6 Did we have any objective evidence that Bret  
7 Wachsmuth had ever committed a crime of violence in his  
8 life?  
9 A. I didn't know Bret Wachsmuth. So, no, I  
10 don't have any --  
11 Q. Well, you know, if you're talking about  
12 whether or not you're going to go to the door with an  
13 officer and knock on it and just visit with the man,  
14 and you're worried about the fact that he's been  
15 reported as being paranoid, wouldn't it be important to  
16 find out whether he had any history of violence in his  
17 life?  
18 MS. WESTBY: Object to the form of the  
19 question.  
20 MR. THOMPSON: Argumentative.  
21 BY MR. GOSMAN:  
22 Q. That's something you'd want to know before  
23 you make a final decision about how to go about this  
24 search warrant, correct?  
25 A. Well, I know that Officer Lara talked to Tom.

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1 and they discussed Bret's mental issues. That was a  
2 concern.  
3 Q. Well, but my question was: Did you -- or did  
4 anybody bother to find out whether Bret Wachsmuth had  
5 any history of violence?  
6 MR. THOMPSON: Objection as to form.  
7 MS. WESTBY: Join.  
8 THE WITNESS: By running a criminal history  
9 or something?  
10 BY MR. GOSMAN:  
11 Q. Yes.  
12 A. I mean, it's tough to talk to his dad since  
13 we weren't going to get him involved.  
14 Q. Well, actually, was there any real reason why  
15 you couldn't have talked to his dad and asked him about  
16 that? Asked him the kind of threat his son posed?  
17 MR. THOMPSON: Objection as to form.  
18 MS. WESTBY: Join.  
19 THE WITNESS: I would think a trained drug  
20 officer would be curious of why the police are calling  
21 to ask if his son's violent.  
22 BY MR. GOSMAN:  
23 Q. Why would that be so strange?  
24 A. I know that --  
25 Q. You're going to serve a warrant on his house.

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1 A. If somebody called me, a police officer, and  
2 asked me if my son was violent, I would want to know  
3 why.  
4 Q. Sure. And what's wrong with telling him?  
5 A. That we're going to serve a search warrant on  
6 his house?  
7 Q. Yeah, exactly.  
8 A. Because the decision was made not to get him  
9 involved.  
10 Q. Well, that doesn't involve him necessarily in  
11 terms of having him come down to the house and get in  
12 the way.  
13 A. Well, what's to keep him from coming to the  
14 house?  
15 Q. All right. So you're telling me that rather  
16 than call Tom Wachsmuth, the boy's father, who you knew  
17 was a reputable peace officer in this area, to find out  
18 whether or not Bret Wachsmuth posed a danger and  
19 whether there was anything he might be able to do to  
20 help diffuse the situation, you elected to completely  
21 forego that possibility simply because you didn't want  
22 to have Tom Wachsmuth involved in the case?  
23 MR. THOMPSON: Objection as to form.  
24 MS. WESTBY: Objection as to form of the  
25 question. That completely misstates the testimony.

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1 MR. THOMPSON: Join.  
2 THE WITNESS: I'm not sure of the question  
3 you're asking.  
4 BY MR. GOSMAN:  
5 Q. You elected to forego any communication with  
6 Tom Wachsmuth simply because he was a law enforcement  
7 officer, correct?  
8 A. No.  
9 MR. THOMPSON: Objection as to form.  
10 BY MR. GOSMAN:  
11 Q. What were the other reasons?  
12 A. He was Bret's father.  
13 Q. All right. He was Bret's father and he was a  
14 law enforcement officer.  
15 But let me ask this question: Would you have  
16 consulted with the father of someone else in  
17 circumstances like this if it wasn't a police officer?  
18 A. No.  
19 Q. You would never do that?  
20 A. Not if we were going to serve a search  
21 warrant, no.  
22 Q. All right. And so in lieu of that, you  
23 assembled 11 police officers and knocked the door down,  
24 correct?  
25 MS. WESTBY: Object to the form of the

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1 question.  
2 BY MR. GOSMAN:  
3 Q. Now, if we wait, what is the safest approach?  
4 A. We knocked the door down pursuant to a search  
5 warrant, yes.  
6 Q. Yes. And you entered the house with loaded  
7 semiautomatic rifles. Correct?  
8 A. Correct.  
9 Q. And a flashbang device was deployed into a  
10 bedroom window, and you were there when that happened,  
11 correct?  
12 A. Yes.  
13 Q. And in your mind, it was a safer procedure to  
14 go forward with that -- with what happened that night  
15 than it was to simply call Tom Wachsmuth or if it had  
16 been someone else, their father, and if you knew that  
17 they were reliable and could be trusted and visit with  
18 them about helping you serve this warrant?  
19 MR. THOMPSON: Objection as to form.  
20 MS. WESTBY: Join.  
21 MR. THOMPSON: Asked and answered, misstates  
22 the testimony.  
23 MS. WESTBY: Join.  
24 THE WITNESS: For the safety of the officers,  
25 for the residents, and because I had already talked to

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1 the chief, who was in communication with Tom's boss,  
2 that was the decision that was made, yes.  
3 BY MR. GOSMAN:  
4 Q. All right. Well, the safety of the officers  
5 is certainly important, correct?  
6 A. Uh-huh.  
7 Q. And the safety of the occupants of the house?  
8 A. Yes.  
9 Q. And certainly, the safety of all occupants is  
10 threatened in a normal situation when you enter a home  
11 with armed officers in a dynamic entry situation as  
12 opposed to just knocking on the door, unless there's a  
13 real reason why you don't just knock on the door.  
14 MS. WESTBY: Okay. Enough. Object to the  
15 form of the question. It -- I don't know if you  
16 haven't read the law, if you don't have any idea of  
17 what it is that you're talking about. But you're  
18 misstating the law in your questions, which I guess I  
19 don't really care about. But you're also being  
20 absolutely, unreasonably argumentative and awful with  
21 these witnesses. So please refrain.  
22 BY MR. GOSMAN:  
23 Q. Officer Kent --  
24 MR. THOMPSON: He needs to take a break.  
25 MR. GOSMAN: Oh, sure.

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1 (Recess taken 3:01 to 3:11  
2 p.m., November 22, 2010)  
3 MR. GOSMAN: Okay. Go ahead and read the  
4 last question if you could, please.  
5 (The record was read as  
6 requested.)  
7 BY MR. GOSMAN:  
8 Q. That's a question to you, sir.  
9 MR. THOMPSON: Object as to the form.  
10 MS. WESTBY: Join.  
11 THE WITNESS: We considered all the options  
12 and with all the circumstances that we knew at the time  
13 that was the best option.  
14 BY MR. GOSMAN:  
15 Q. And those were the circumstances that the  
16 confidential informant had related to Officer Miner  
17 about Bret Wachsmuth, correct?  
18 A. The concerns we had, yes.  
19 Q. Is there some kind of rule as a police  
20 officer that you don't involve the public in assisting  
21 in relatives, family members et cetera, if it can be  
22 accomplished safely?  
23 A. I don't know what you're trying to ask there.  
24 I mean, is there a rule?  
25 Q. Yeah -- yes, is there a rule?

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1 A. That we can't call the parents?  
2 Q. Yes.  
3 A. Well, when my Chief and Tom's boss say not  
4 to, then I consider that a rule to me.  
5 Q. All right. And I am in perfect agreement  
6 with that. I want to know if there's any other  
7 protocol that you're aware of as a law enforcement  
8 officer in your career that says you just don't do  
9 that?  
10 A. When you're serving a warrant, no.  
11 Q. When you're serving a warrant. What is your  
12 answer?  
13 A. When you're serving a warrant, you're not  
14 going to call the parents or the relatives to tip off  
15 the people that you're serving the warrant on.  
16 Q. Okay. And that's based on your training as a  
17 law enforcement officer?  
18 A. That and common sense.  
19 Q. Okay. One of the other thoughts that you had  
20 was just simply knocking on the -- or one of the  
21 thoughts that you had was seeing if you could get Bret  
22 Wachsmuth out of the house. What happened to that  
23 idea?  
24 A. That was one of the options that was  
25 discussed, and we decided to do it the way we did it.

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1 Q. Okay.  
2 All right. Now, were there any other options  
3 that you discussed, other than calling Mr. Wachsmuth,  
4 Sr., and inviting him to call his son out or provide  
5 information about his actual threat status to the  
6 officers?  
7 Using a ruse to bring him out of the house  
8 and get him to a bar, for instance, or just going to  
9 the door and knocking on it, were there any other  
10 options that were discussed?  
11 MS. WESTBY: Object to the form of the  
12 question. Misstates the testimony.  
13 MR. THOMPSON: Join.  
14 THE WITNESS: Not that I recall, other than  
15 serving the warrant.  
16 BY MR. GOSMAN:  
17 Q. Okay. And let's go to Exhibit 10 again for a  
18 moment. And I want you to tell me if there's any  
19 reference in Exhibit 10 to any of those alternatives  
20 being discussed.  
21 A. Not that I can see.  
22 Q. Were they discussed at that meeting that  
23 Marissa Torczon was at?  
24 A. They were discussed between -- I don't know  
25 if they were discussed at that meeting. They were

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1 discussed between myself and the Chief.  
2 Q. All right. Let's go to Exhibit 16. And we  
3 have officer -- Sergeant Chretien's report. And --  
4 one, two, three, four -- four paragraphs down, it's  
5 just a very short paragraph, I think it's two  
6 sentences. Would you read that into the record,  
7 please?  
8 A. Is that the one that starts "Based on the  
9 information received"?  
10 Q. Yes.  
11 A. "Based on the information received and my  
12 knowledge, training and experience on numerous narcotic  
13 search warrants, I decided to take extra precautions to  
14 minimize the chance of someone getting hurt.  
15 These extra precautions included planning  
16 multiple breaches simultaneously, using as many  
17 officers I had available and introducing a noise flash  
18 distraction device, NFDD, or flashbang."  
19 Q. Okay. Can you tell me how many times the  
20 Powell Police Department has trained for situations  
21 involving multiple breaches simultaneously using as  
22 many officers as you have -- as were available and  
23 introducing a noise flash distraction device?  
24 A. We have trained on it. I can't give you a  
25 number.

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1 Q. All right. So is there any reference in  
2 there to other considerations being made or entering  
3 into the decision that Officer Chretien was involved  
4 with here?  
5 A. Not in Officer Chretien's report -- Sergeant  
6 Chretien's report.  
7 Q. So those were things that you were weighing  
8 with the Chief before the decision was finally made to  
9 go ahead with this dynamic entry; is that correct?  
10 A. Sergeant Chretien would have been involved in  
11 those considerations also.  
12 Q. He doesn't mention any of them in his report,  
13 though, does he?  
14 A. Not that I see, no.  
15 Q. Did you know that Lt. Patterson had suggested  
16 that Tom Wachsmuth perhaps be consulted in this case in  
17 order to avoid having to use a SWAT team to go into his  
18 son's home?  
19 A. Not until later when I read his report.  
20 Q. Do you remember a discussion that Tom  
21 Wachsmuth was to be held at bay if he came down to the  
22 police station that night?  
23 A. Be held at bay?  
24 Q. Or to be kept from what was going on?  
25 I think -- let's look at Exhibit 10 and see

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1 what it says exactly.  
2 "Tom Wachsmuth stays in lobby." Do you  
3 remember discussing that?  
4 A. Not specifically, no.  
5 Q. In fact, wasn't it Lt. Patterson that first  
6 came up with the idea of involving Tom Wachsmuth?  
7 A. I said a minute ago I don't know what his --  
8 conversation until I read his report.  
9 Q. Well, how did the subject of Tom Wachsmuth  
10 come up as you remember it?  
11 A. What part of the subject are you talking  
12 about?  
13 Q. About whether or not he should be consulted  
14 in this case.  
15 A. That would be a standard question that --  
16 when you're running all the scenarios through your  
17 head.  
18 Q. Well, why would it be a standard question if  
19 you never do something like that when you serve a  
20 warrant?  
21 A. Well, if we never do it, it doesn't mean we  
22 don't talk about it.  
23 Q. Oh, I see.  
24 I want you to turn to Exhibit 29 for just a  
25 moment.

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1 (Exhibit 29 identified)  
2 BY MR. GOSMAN:  
3 Q. Have you ever seen that document before?  
4 A. Yes.  
5 Q. What is it?  
6 A. It's a crisis response tactics training from  
7 the Powell Police Department.  
8 Q. Have you taken it?  
9 A. Yeah.  
10 Q. Is it part of the Powell Police Department  
11 policies regarding crisis response?  
12 A. No, it's a training document.  
13 Q. Okay. Let's go to page 18 of that document  
14 for a moment. See the heading there, "Dynamic"?  
15 A. Yes.  
16 Q. And there's an introduction, do you see that?  
17 A. Yes.  
18 Q. And in the introduction it describes the  
19 levels of response that are appropriate in a given  
20 situation. Correct?  
21 A. Yes.  
22 Q. Have you ever heard of the force continuum?  
23 A. Yes.  
24 Q. What is it? What do you understand that term  
25 to mean?

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1 A. Well, it's -- it's a level of force that we'd  
2 use in a given instance for resistance or threats  
3 against you.  
4 Q. All right. And so it goes up as the threat  
5 increases, correct?  
6 A. Yes.  
7 Q. All right. And is it true that in every  
8 situation, if the force -- or if the threat is low, the  
9 force should also be low?  
10 MS. WESTBY: Object to the form of the  
11 question.  
12 MR. THOMPSON: Join.  
13 MS. WESTBY: That completely misstates the  
14 law.  
15 MR. GOSMAN: I'm not talking about the law.  
16 I'm talking about the force continuum.  
17 MS. WESTBY: And I'm objecting as to the fact  
18 that your question --  
19 MR. GOSMAN: And that misstates the law.  
20 That's your testimony here today?  
21 THE WITNESS: What is the question?  
22 BY MR. GOSMAN:  
23 Q. If the threat is low, then the force should  
24 also be low to meet the threat, correct?  
25 MS. WESTBY: Object to the form of the

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1 question.  
2 MR. THOMPSON: Join.  
3 THE WITNESS: Correct.  
4 BY MR. GOSMAN:  
5 Q. All right. And it's only when the threat  
6 becomes higher that you would move into a situation  
7 where you would employ something like a dynamic entry?  
8 A. Well, any amount of force can escalate and  
9 then de-escalate also.  
10 Q. All right. Well, let me have the reporter  
11 read my question back.  
12 (The record was read as  
13 requested.)  
14 THE WITNESS: Yes.  
15 BY MR. GOSMAN:  
16 Q. And in these training materials that we're  
17 looking at right now from Exhibit 29, under paragraph  
18 B, it says "Why dynamic," and then it lists the reasons  
19 why you would utilize a dynamic entry, correct?  
20 A. Uh-huh.  
21 Q. If life is threatened?  
22 A. Yes.  
23 Q. Suicide or harm to others?  
24 A. Yes.  
25 Q. And let's go ahead and talk about the second

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1 paragraph. If evidence may be destroyed or, for  
2 instance -- and then under subparagraph A, in a drug  
3 arrest; was that a concern in this case?  
4 A. It could have been a concern that the  
5 evidence was destroyed.  
6 Q. I don't care about what it could have been.  
7 Was it a concern in this case?  
8 MS. WESTBY: Object to the form of the  
9 question.  
10 MR. THOMPSON: Counsel, you're arguing and  
11 badgering the witness.  
12 MR. GOSMAN: All right. I'll try to keep  
13 that in mind. I will. Thank you.  
14 BY MR. GOSMAN:  
15 Q. Was it a concern in this case, Officer?  
16 A. Yes, we were serving a drug warrant.  
17 Q. Did anybody say that there was a threat to  
18 destruction of evidence in this case in any of these  
19 conversations that you had leading up to the actual  
20 service of this warrant?  
21 A. Did anybody say it specifically?  
22 Q. Yeah.  
23 A. No.  
24 Q. How easy is it to dispose of 11 to 15  
25 marijuana plants in the time it takes to knock on the

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1 door and wait for somebody to answer it?  
2 A. You can do a lot of things with it in a  
3 matter of seconds. You can flush it down the toilet --  
4 Q. Oh, really?  
5 A. -- there's all kinds of stuff.  
6 Q. You can flush --  
7 MS. WESTBY: Excuse me. The witness is  
8 trying to answer your question. Please do not  
9 interrupt.  
10 BY MR. GOSMAN:  
11 Q. So it's your testimony that you could flush  
12 11 to 15 plants down the toilet in a matter of seconds?  
13 MS. WESTBY: Object to the form of the  
14 question.  
15 THE WITNESS: Before you make it to the  
16 basement, yes. You can throw them in the furnace. You  
17 can run up the stairs and --  
18 BY MR. GOSMAN:  
19 Q. Throw them in the furnace? How do you throw  
20 11 to 15 marijuana plants in the typical home furnace?  
21 A. Well, I've got a wood stove at my house, so I  
22 can throw it in the wood stove. A lot of people in  
23 Wyoming have wood stoves. So you can throw it in a  
24 wood stove type furnace.  
25

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1 Q. All right. Was life threatened in the  
2 service of the Wachsmuth warrant?  
3 A. No.  
4 Q. Did you know whether Bret Wachsmuth had any  
5 prior criminal history whatsoever?  
6 A. No, I think -- I believe I answered no when  
7 you asked that earlier.  
8 Q. No, I asked you if you were aware of whether  
9 he had any history of violence.  
10 A. Okay. No.  
11 Q. And you didn't know whether he had any  
12 history of violence and you didn't know whether he had  
13 any criminal history?  
14 A. No.  
15 Q. Do you understand the difference between  
16 being a violent person and being a depressed person?  
17 A. Yes.  
18 MS. WESTBY: Object to the form of the  
19 question.  
20 BY MR. GOSMAN:  
21 Q. And do you understand the difference between  
22 being a paranoid person and being a violent person?  
23 A. Yes.  
24 Q. So what evidence was there that day that Bret  
25 Wachsmuth was a violent person?

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1 MS. WESTBY: Object to the form of the  
2 question.  
3 MR. THOMPSON: Join.  
4 THE WITNESS: I've dealt with depressed  
5 people that have been violent in my experience.  
6 BY MR. GOSMAN:  
7 Q. And you've probably dealt with Caucasians  
8 that have been violent and Hispanics that have been  
9 violent, too?  
10 A. Yes.  
11 Q. So that doesn't really -- the fact that he  
12 was depressed does not mean he was violent, correct?  
13 MS. WESTBY: Object to the form of the  
14 question.  
15 MR. THOMPSON: Join.  
16 THE WITNESS: All I can go by is my  
17 experience. I've dealt with depressed people that have  
18 been violent.  
19 BY MR. GOSMAN:  
20 Q. The question is, and I think you've already  
21 answered it: Depression is not synonymous with  
22 violence, correct?  
23 A. Not synonymous, no.  
24 Q. All right. And what you were interested in  
25 and what you needed to know was: whether Bret Wachsmuth

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1 was a violent person, correct?  
2 A. Yes.  
3 MS. WESTBY: Object to the form of the  
4 question.  
5 BY MR. GOSMAN:  
6 Q. Because if he wasn't a violent person, he  
7 probably wasn't a threat to the officers, correct?  
8 MS. WESTBY: Object to the form of the  
9 question.  
10 BY MR. GOSMAN:  
11 Q. Unless there was some other special  
12 circumstance that you were aware of, suicide or  
13 something like that?  
14 MS. WESTBY: Same objection.  
15 THE WITNESS: Based on what we knew, the  
16 totality of the circumstances, the information we had  
17 from the confidential informant --  
18 BY MR. GOSMAN:  
19 Q. Was that he was depressed?  
20 A. Was that he was depressed, that he had guns,  
21 that he was a peeper, that he was taking narcotics that  
22 he was getting in the mail, that he knew that we were  
23 coming.  
24 The whole situation rolled into one big  
25 package, that's what we -- the information we were

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1 going off of.  
2 Q. All right. Does the fact that a person looks  
3 out his window mean that he's violent?  
4 A. When he's looking out his window to see if  
5 the cops are coming or if the bad guys are coming.  
6 Q. Well, is there any evidence that that's why  
7 Bret Wachsmuth looked out the windows?  
8 A. That's the impression I got when they said he  
9 was a peeper.  
10 Q. But you didn't have any other information in  
11 the fact that you were told that he was a peeper,  
12 correct?  
13 MS. WESTBY: Object to the form of the  
14 question.  
15 THE WITNESS: I'm not sure where you're going  
16 with this because, I mean, that was the information we  
17 got from the confidential informant.  
18 BY MR. GOSMAN:  
19 Q. That he was a peeper; that he looked out his  
20 window?  
21 A. Looking for people that were coming to his  
22 house, such as the cops and the bad guys.  
23 Q. All right. So did Bret Wachsmuth -- was  
24 there any specific evidence that Bret Wachsmuth was  
25 using large quantities of prescription medication?

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1 MR. THOMPSON: Objection as to form.  
2 MS. WESTBY: Join.  
3 THE WITNESS: The information that the CI  
4 provided.  
5 BY MR. GOSMAN:  
6 Q. Well -- and I'd prefer if we could, to go to  
7 the record for that information. Why don't we take a  
8 look at Exhibit 13. And I want you to tell me if  
9 there's any reference in there to Mr. Wachsmuth  
10 using -- okay, other drugs. And as a matter of fact, I  
11 just found it myself. So it's on page 4.  
12 The Wachsmuths would take these controlled  
13 substances, either by crushing the pills or snorting  
14 them or by injecting the controlled substances with  
15 needles. This is according to the CI.  
16 Now, is there anything about the fact that  
17 someone is taking a controlled substance that indicates  
18 that they are violent and represent a threat to police  
19 officers?  
20 A. It depends on what they are taking.  
21 Q. Okay. Well, it looks like it's mostly  
22 oxycodone and morphine.  
23 A. Okay.  
24 Q. All right. Do people who take oxycodone and  
25 morphine become violent towards police officers?



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1 A. They can.  
2 Q. Well, if they took methamphetamine, they  
3 might be more inclined to be violent; isn't that true?  
4 A. More inclined, yes. But any narcotic can  
5 trigger violent responses.  
6 Q. All right. So I've heard you say, and I've  
7 heard every officer in these depositions say over and  
8 over again the totality of the circumstances, but I  
9 want to take each one of these circumstances  
10 individually. And I want you to tell me what it is  
11 about the fact that Bret Wachsmuth was known to take  
12 pills that's in and of itself indicated that he was a  
13 threat to the safety of anyone else in that home or to  
14 the police officers who might come to the door to  
15 execute a search warrant.  
16 A. It depends, I suppose, on the amount of pills  
17 he took. But taking narcotic can make you violent.  
18 Q. Well, if he took a lot of oxycodone or  
19 morphine, he certainly wouldn't be violent, he'd be  
20 lethargic, wouldn't he?  
21 A. Probably be in a coma.  
22 Q. Yeah. So the question remains: Is there  
23 anything in the evidence that Bret Wachsmuth was taking  
24 prescription medication that would support the  
25 inference that he was a violent person and represented

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1 a threat to police officers?  
2 MS. WESTBY: Other than the fact that he's  
3 committing a crime?  
4 MR. GOSMAN: I'm asking the questions, thank  
5 you.  
6 MR. THOMPSON: Objection as to form. Asked  
7 and answered.  
8 THE WITNESS: If you take narcotics, you can  
9 be violent. I don't know how else to answer that.  
10 BY MR. GOSMAN:  
11 Q. All right. Was there any evidence that Bret  
12 Wachsmuth had ever taken narcotic medication and had  
13 been violent in the past? Any specific instance?  
14 A. I'd never met him before. So, no, not to my  
15 knowledge.  
16 Q. And the confidential informant had no  
17 specific information about Bret Wachsmuth being violent  
18 at any time; isn't that true?  
19 MR. THOMPSON: Objection as to form.  
20 MS. WESTBY: Join.  
21 THE WITNESS: I believe there was a statement  
22 somewhere that the confidential informant was afraid of  
23 him.  
24 BY MR. GOSMAN:  
25 Q. Where is that?

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1 A. I don't remember if it's written down in a  
2 report or if I recall --  
3 Q. All right. We're not going to waste time  
4 tracking that one down. I'm talking about specific  
5 instances where Bret Wachsmuth had, because of his  
6 narcotic use or because of the fact that he peeped out  
7 windows, had ever been violent or threatened violence  
8 to any person?  
9 A. Not to my knowledge, no.  
10 Q. Bret Wachsmuth had loaded -- there was  
11 information from the confidential informant that he had  
12 loaded guns in his house, correct?  
13 A. Yes.  
14 Q. Do you have loaded guns in your house?  
15 A. Yes. But I don't use drugs.  
16 Q. Okay. Do you know whether having loaded guns  
17 in your house in and of itself poses any objective  
18 danger to police officers who would be serving a  
19 warrant?  
20 MS. WESTBY: Object to the form of the  
21 question.  
22 MR. THOMPSON: Join.  
23 THE WITNESS: If there's loaded guns in the  
24 house and you're serving a search warrant, that would  
25 be a danger to police officers? Certainly.

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1 Q. Why?  
2 A. Because they could be used against you.  
3 Q. Well, of course they could be used against  
4 you, but there has to be some evidence that they may be  
5 used against you, isn't that true, in order for it to  
6 be a threat of violence?  
7 MS. WESTBY: Object to the form of the  
8 question.  
9 THE WITNESS: Other than somebody pointing it  
10 at you, I don't know what you're going for here.  
11 Because if somebody has a gun in their house, you're  
12 serving a search warrant, they can use that gun against  
13 you.  
14 BY MR. GOSMAN:  
15 Q. All right. Would that be the basis for a  
16 dynamic entry, the fact that they have a gun in their  
17 house?  
18 MR. THOMPSON: Objection as to form.  
19 MS. WESTBY: Join.  
20 THE WITNESS: Our entry was to serve a search  
21 warrant.  
22 BY MR. GOSMAN:  
23 Q. It was a dynamic entry?  
24 A. When nobody answered the door it became a  
25 dynamic entry, yes. But it was to serve a search

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1 warrant.  
2 Q. I see. Well, it was a dynamic entry. It was  
3 planned as a dynamic entry, and the question is: Does  
4 the fact that someone has a gun in their house justify  
5 that rising level of forcing the -- in the force  
6 continuum?  
7 MS. WESTBY: Object to the form of the  
8 question. Misstates his testimony. You can't just  
9 change his testimony because you don't like it.  
10 MR. THOMPSON: Join.  
11 THE WITNESS: That he had guns in the house  
12 and with everything else, that was the reason the  
13 decision was made to do what we did.  
14 BY MR. GOSMAN:  
15 Q. And everything else included the fact that  
16 you knew that he was -- or you heard that he was  
17 depressed, paranoid, and peeped out his windows?  
18 A. And he had guns in the house, he used  
19 narcotics, he knew we were coming. There's a picture  
20 of him on the Internet of him wearing a vest carrying a  
21 military style weapon. I mean, you take it all and add  
22 it together and, yes, we were concerned.  
23 BY MR. GOSMAN:  
24 Q. What if we take away a couple of those  
25 things. What if we take away, for instance, the fact

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1 that Officer Lara testified concerning his knowledge of  
2 Bret Wachsmuth, and that -- and Sergeant Eckerdt's  
3 testimony regarding these photographs?  
4 MR. THOMPSON: Objection as to form.  
5 Relevance.  
6 BY MR. GOSMAN:  
7 Q. Is there any substantive difference in your  
8 mind between the scenario that would justify dynamic  
9 entry --  
10 MR. THOMPSON: Object.  
11 BY MR. GOSMAN:  
12 Q. -- without those two pieces of evidence?  
13 MR. THOMPSON: Objection as to form.  
14 MS. WESTBY: Join.  
15 THE WITNESS: I don't know how I could even  
16 speculate on that. I mean, I would have to guess. How  
17 do I guess -- I mean, if he came down and turned  
18 himself in at the police department, then we wouldn't  
19 have had to worry about any of this. I mean, that  
20 doesn't -- to me, that question doesn't make any sense.  
21 BY MR. GOSMAN:  
22 Q. All right. Okay. Let's go ahead and look at  
23 subparagraph C on page 18 of Exhibit 29.  
24 A. What page?  
25 Q. Eighteen.

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1 A. Paragraph C, you said?  
2 Q. Yes.  
3 A. Okay.  
4 Q. Okay, the traditional slow methodical  
5 approach has as its primary objective officer safety.  
6 Do you agree with that?  
7 A. Depending on the situation.  
8 Q. Well, do you agree with that or not?  
9 A. Depending on the situation.  
10 Q. As you move up the continuum, your primary  
11 objective changes to apprehension of the suspect.  
12 Do you agree with that, we're talking about  
13 the force continuum?  
14 A. Yes.  
15 Q. At this point, you begin taking calculated  
16 risks, correct?  
17 A. At which point?  
18 Q. At the point where you change the objective  
19 and move up the continuum of force.  
20 A. I'm not sure I understand.  
21 Q. Any time you inject a dynamic entry into a  
22 situation and you are having officers involved with  
23 semiautomatic weapons, flashbang devices, et cetera,  
24 the overwhelming show of force, you are moving up the  
25 force continuum, yes?

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1 A. Yes.  
2 Q. And when you do that, you begin taking  
3 calculated risks.  
4 A. You take calculated risks that offset the  
5 overall safety of the residents, the officers, and the  
6 destruction of evidence.  
7 Q. So there must be some fairly significant  
8 threat to the overall safety of the officers in order  
9 for you to move up this continuum of force?  
10 A. On this particular search warrant, yes.  
11 Q. Okay. Now, let's go ahead and take a look at  
12 page 19, "Principles of Dynamic Entry."  
13 Why don't you read the first three items that  
14 are listed there.  
15 A. Surprise, speed, violence of action.  
16 Q. Okay. And the violence of action is  
17 countering the threat, the realistic threat of violence  
18 coming from the suspect, correct?  
19 A. No.  
20 Q. What is it?  
21 A. Violence of action would be like rapid  
22 movement, noise, distractions.  
23 Q. Right. As part of the overwhelming show of  
24 force?  
25 A. Yes.

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1 Q. And those are designed to counter the threat  
2 from a suspect?  
3 A. Yes.  
4 Q. And we have, then, under "Dynamic Tactics,"  
5 the heading "Diversion Devices." And I want you to  
6 read paragraph A into the record for me, please.  
7 A. "A diversion device should be used when you  
8 are sure or reasonably sure there is a subject in a  
9 building that you feel is about to take his or her own  
10 life and other persons' lives."  
11 Q. Do you agree with that?  
12 A. At the time this training was current, yes.  
13 Q. Okay.  
14 A. Since then it's been updated.  
15 Q. Well, when did you take this training?  
16 A. This particular training I took in 1995.  
17 Q. Okay. How has it been updated?  
18 A. Well, with the countermeasures training --  
19 and the P.I.E.R. training that we had.  
20 Q. Do you know whether the rules have changed  
21 for the deployment of a diversion device?  
22 A. This is a training manual. It's not a policy  
23 manual. So the training has changed.  
24 Q. How so?  
25 A. On when to use a diversion device?

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1 Q. Yes.  
2 A. You use it -- in this case, on this  
3 particular instance, we used it as a distraction device  
4 in another room to keep people from going into that  
5 room.  
6 Q. How did you know the whole family wasn't in  
7 that room?  
8 A. There was no lights on in there. All the  
9 lights were in the living room.  
10 Q. Well, but when you planned to use the  
11 diversion device, you didn't know that, correct?  
12 A. No, but the bedroom is where the threat was,  
13 the weapons.  
14 Q. Okay. Then on page 5 of this document, let's  
15 go ahead and go there for a moment. There's a list of  
16 critical incidents, correct?  
17 A. Yes.  
18 Q. And under paragraph B on that page there is a  
19 statement that's -- it's B1, why don't you read that  
20 into the record.  
21 A. "It would take a fully trained SWAT or  
22 hostage rescue team to deal with many of these. As an  
23 agency, we cannot justify a SWAT team by these types of  
24 activity being commonly present here or by budgetary  
25 means as SWAT teams require a great amount of training

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1 time."  
2 Q. Okay. And then read the first part of  
3 paragraph 2.  
4 A. "However, if you look at some of these types  
5 of critical incidents, you will see that with  
6 additional training in a few skilled areas our patrol  
7 personnel would deal with it. Some of these are" --  
8 Q. Do you know what additional training was made  
9 available to the officers that were involved in this  
10 dynamic entry that evening?  
11 MR. THOMPSON: Objection as to form.  
12 MS. WESTBY: Join.  
13 THE WITNESS: Additional training?  
14 BY MR. GOSMAN:  
15 Q. Yes.  
16 A. The countermeasures training.  
17 Q. Is that it?  
18 A. Plus the training that we do in-house.  
19 Q. Was it Sergeant Chretien that assigned you  
20 and Officer McCaslin to deploy the distraction device?  
21 A. Yes.  
22 Q. Did you have any input in that?  
23 A. I agreed to it.  
24 Q. Did you know that Officer McCaslin had only  
25 deployed a device once during his training with

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1 Countermeasures Tactical Institute?  
2 MS. WESTBY: Object to the form of the  
3 question. Misstates the testimony.  
4 MR. THOMPSON: Join.  
5 THE WITNESS: I don't know how many times  
6 Officer McCaslin --  
7 BY MR. GOSMAN:  
8 Q. Did you ask him?  
9 A. No.  
10 Q. Why not?  
11 A. Because nobody in the department has thrown  
12 it more than two or three times total, or each officer.  
13 So I would assume that he had probably not deployed one  
14 more than two or three times.  
15 Q. I thought you told me that you deployed one  
16 numerous times over the course of the years with the  
17 Powell Police Department?  
18 A. I said I've been involved in the training.  
19 I've thrown dummy ones. I've thrown live ones once.  
20 Q. When did you do that?  
21 A. At the countermeasures training at the range  
22 in Cody.  
23 Q. That was probably the same time McCaslin did  
24 it.  
25 Do you know if he was there with you during

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1 that training session?  
2 A. I don't know if he was present. Half the  
3 department was.  
4 Q. All right. So you've got a team that's been  
5 assembled, and one of the functions of the team is to  
6 deploy a distraction device and nobody has thrown one  
7 more than two or three times, and you've only thrown a  
8 live one once, correct?  
9 A. Up until this point, yeah.  
10 Q. All right. And so was there any discussion  
11 about how the diversionary device was to be deployed?  
12 A. Yes.  
13 Q. What was that discussion?  
14 A. That it was to be placed inside that room.  
15 Q. Who said that?  
16 A. Sergeant Chretien.  
17 Q. And did you have any input in that?  
18 A. I didn't have any input to offer, no.  
19 Q. How was it to be placed inside that room?  
20 A. Dropped in the window.  
21 Q. And was there any discussion about looking to  
22 make sure that the device wasn't dropped on the head of  
23 the child that may be in the room?  
24 MR. THOMPSON: Objection as to form.  
25 MS. WESTBY: Join.

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1 THE WITNESS: There was a discussion of  
2 looking in the window, yes.  
3 BY MR. GOSMAN:  
4 Q. Okay. And, in fact, if the officer couldn't  
5 see in the window, that would be a good reason for not  
6 deploying the distraction device, wouldn't it?  
7 MS. WESTBY: Object to the form of the  
8 question.  
9 MR. THOMPSON: Join.  
10 THE WITNESS: He could see in the window.  
11 BY MR. GOSMAN:  
12 Q. I didn't say that, though. I said if you  
13 could not see in the window, that would be a good  
14 reason for not deploying the distraction device.  
15 MS. WESTBY: Object to the form of the  
16 question.  
17 MR. THOMPSON: Join.  
18 THE WITNESS: Yes.  
19 BY MR. GOSMAN:  
20 Q. So could McCaslin see in the window?  
21 A. I don't know. You'd have to ask McCaslin.  
22 Q. Well, you were there standing right next to  
23 him, correct?  
24 A. Yes.  
25 Q. Could he see in the window?

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1 MR. THOMPSON: Objection as to form. Asked  
2 and answered.  
3 MS. WESTBY: Join.  
4 THE WITNESS: I know what I could see.  
5 BY MR. GOSMAN:  
6 Q. You were the one that broke out the window,  
7 correct?  
8 A. Yes.  
9 Q. How tall are you?  
10 A. Six-foot.  
11 Q. Did you look in the window?  
12 A. Yes.  
13 Q. How did you do that?  
14 A. I looked in the window.  
15 Q. Okay. Who did you see?  
16 A. I saw -- first I saw the glass and the shade.  
17 When I broke it and ripped the shade down, then I could  
18 see the walls behind it.  
19 Q. Okay. All right. Could you see the bed  
20 underneath the window?  
21 A. No.  
22 Q. Did you know the distraction device was being  
23 placed in the middle of a bed in the bedroom?  
24 MR. THOMPSON: Objection as to form.  
25 MS. WESTBY: Join.

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1 THE WITNESS: I didn't know it was under the  
2 window, no.  
3 BY MR. GOSMAN:  
4 Q. Because you couldn't see it, correct?  
5 A. Not underneath the window, no.  
6 Q. The window was about 6 feet off the ground,  
7 wasn't it?  
8 A. I don't recall. It was about like this to  
9 me.  
10 Q. Okay. You left the station that evening  
11 after the decision had been made to forego all the  
12 other options that had been considered and to conduct  
13 the dynamic entry; am I correct?  
14 A. We left the station to serve a search  
15 warrant.  
16 Q. You left the station to serve a search  
17 warrant. And who were -- who did you go with to the  
18 Wachsmuth residence?  
19 A. I drove my own car.  
20 Q. Was anyone with you?  
21 A. I believe McCaslin was with me.  
22 Q. Okay. Did you and he have any discussion  
23 about what you were going to do there that night?  
24 A. No, we knew what we were going to do.  
25 Q. And were you aware of the fact that you

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1 simply do not put a distraction device somewhere where  
2 you don't know where it's going to go?  
3 MS. WESTBY: Object to the form of the  
4 question.  
5 MR. THOMPSON: Join.  
6 BY MR. GOSMAN:  
7 Q. Isn't that part of your training?  
8 A. No.  
9 Q. So it's okay to throw a distraction device  
10 blindly into a room?  
11 MS. WESTBY: Object to the form of the  
12 question.  
13 MR. THOMPSON: Join.  
14 THE WITNESS: Not to throw blindly. But  
15 there may be circumstances where you don't know where  
16 it's going to end up.  
17 BY MR. GOSMAN:  
18 Q. All right. But the point is that all of the  
19 training materials for distraction devices indicate  
20 that you should look before you throw the device at  
21 where it's going to go, understanding that there may be  
22 circumstances where it won't end up where you thought  
23 it was going to go.  
24 A. I don't know which training materials you're  
25 talking about.

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1 Q. Well, is that true or not, based on the  
2 training materials that you've viewed?  
3 A. The only -- I don't remember seeing any  
4 training materials on a distraction device.  
5 Q. Okay. All right. Why don't we go ahead and  
6 take a piece of paper, and let's make an exhibit and  
7 identify this as Exhibit 53.  
8 (Exhibit 53 identified)  
9 BY MR. GOSMAN:  
10 Q. And I'd like you to put a perimeter around  
11 the lot of the Wachsmuth residence and the street  
12 perhaps, and where you were when you arrived and when  
13 you began executing this warrant.  
14 A. You want me to draw a picture of the house?  
15 Q. Yes. And there is a diagram there on  
16 Exhibit 10 that contains an outline of the house.  
17 A. (Witness complies.)  
18 Q. Okay. Have you located yourself on the  
19 diagram?  
20 A. Oh, at which point?  
21 Q. That would be when you first arrived.  
22 And when I say first arrived, I don't mean  
23 the moment, but as soon as you got out of the car and  
24 got set up for what you were about to do.  
25 A. Just with an X?

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1 Q. That's fine. But go ahead and put your name  
2 there and also McCaslin's if he was with you.  
3 A. (Witness complies.)  
4 Q. Okay. Were you able to see the entry team?  
5 A. Not while I was breaking the window, but they  
6 were around the corner from me.  
7 Q. Did you hear a dog bark as you drove up?  
8 A. Yes.  
9 Q. How did you react to that?  
10 A. It worried me that they knew we were coming.  
11 Q. And, of course, this is a knock-and-announce  
12 warrant, right?  
13 A. Yes.  
14 Q. So you're going to knock on the door and  
15 announce you're there?  
16 A. Yes.  
17 Q. So -- would have been, what, in another few  
18 seconds from the time the dog started barking, correct?  
19 MS. WESTBY: Object to the form of the  
20 question.  
21 MR. THOMPSON: Join.  
22 THE WITNESS: It would have been when the  
23 team got to the front door.  
24 BY MR. GOSMAN:  
25 Q. When did the dog start barking?

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1 A. As the team was approaching the door.  
2 Q. So it was a matter of no more than a few  
3 seconds --  
4 MS. WESTBY: Objection.  
5 BY MR. GOSMAN:  
6 Q. -- before the team made it to the front door  
7 after the dog started barking?  
8 MS. WESTBY: Object to the form of the  
9 question.  
10 THE WITNESS: I don't have an idea about the  
11 time. It wasn't very long.  
12 BY MR. GOSMAN:  
13 Q. Okay. Did you see the entry team approaching  
14 the front door after the dog barked?  
15 A. Yes, we were behind them.  
16 Q. Did they hurry up?  
17 A. They weren't running, but they were walking  
18 quickly.  
19 Q. Did they walk more quickly after they heard  
20 the dog bark?  
21 A. I don't know.  
22 Q. Were you wearing protective armor that was  
23 different from the typical vest that you wear every day  
24 when you go out on patrol?  
25 A. I was wearing my raid vest, yes.

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1 Q. Okay. Was everyone else wearing those raid  
2 vests, as you call them?  
3 A. I don't know what everybody was wearing.  
4 They should have been.  
5 Q. And that's not something that they wear  
6 normally, is that correct, on patrol?  
7 A. No.  
8 Q. And were you able to position yourself at the  
9 window before the officers arrived at the porch and  
10 announced their presence?  
11 A. I believe we arrived right about the same  
12 time.  
13 Q. Did you hear them say "Police, search  
14 warrant"?  
15 A. Yes.  
16 Q. And what did you -- did you hear the door  
17 being rammed?  
18 A. Yes.  
19 Q. How much time elapsed?  
20 A. I don't know.  
21 Q. Were you surprised that the window was as  
22 high as it was off the ground in the bedroom?  
23 A. Not really. That style of house is pretty  
24 common in Powell.  
25 Q. Did you try to get on your tiptoes and look

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1 in the window and look inside the window sill and down  
2 at the area where the device was going to be deployed?  
3 A. No.  
4 Q. Prior to your arrival at the house, did you  
5 have any information about where the child was located?  
6 MR. THOMPSON: Objection as to form.  
7 MS. WESTBY: Join.  
8 THE WITNESS: I'm not sure there was a child.  
9 BY MR. GOSMAN:  
10 Q. Well, I think we understand now that there  
11 wasn't a child. But at the time, there was --  
12 A. Officer Blackmore said there appeared to be a  
13 child.  
14 Q. Well, I don't see where he says that there  
15 appeared to be a child. He said he saw a child go into  
16 the residence and he didn't see a child come out.  
17 MS. WESTBY: Object to --  
18 BY MR. GOSMAN:  
19 Q. Isn't that what Officer Blackmore said?  
20 MS. WESTBY: Object to the form of the  
21 question.  
22 MR. THOMPSON: Join.  
23 THE WITNESS: I remember him saying it  
24 appeared there was a child.  
25 BY MR. GOSMAN:

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1 Q. All right. And, in fact, on Exhibit 10, it's  
2 identified as a ten-year-old child. Do you see that?  
3 MR. THOMPSON: Objection as to form.  
4 MS. WESTBY: And as to questioning this  
5 witness on this document.  
6 THE WITNESS: That's what's written there,  
7 yes.  
8 BY MR. GOSMAN:  
9 Q. Did you remember discussing that? Was that  
10 mentioned at all in the plan to serve this search  
11 warrant?  
12 A. Yes.  
13 Q. And so my question was, and is, then: Do you  
14 remember anyone saying where the child was located?  
15 A. We had no idea where the child was located.  
16 I do remember that in conversations with Officer Lara  
17 and his conversations with Tom, he knew that Bret and  
18 Tricia didn't have children.  
19 Q. All right. Let's take a look at the list on  
20 the second page of Exhibit 10 again. It says  
21 "Chretien, LG4; Danzer, LG3; Hall, LG2; Chapman, LG1."  
22 Do you know what those numbers represent?  
23 A. I'm assuming that the numbers are where they  
24 line up. I'm not sure what LG stands for.  
25 Q. Was that discussed prior to leaving for the

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1 Wachsmuth home that night at the police station, how  
2 the officers would line up on the porch?  
3 A. Yes.  
4 Q. And it was -- was it Chretien that prepared  
5 this list?  
6 A. No, I think Marissa wrote this list.  
7 Q. I'm sorry, that's right. Marissa prepared  
8 the list. Was it Chretien that determined this order?  
9 A. Yes.  
10 Q. All right. The -- Plaintiff's Exhibit 10  
11 also contains a numbered list on the front page, it has  
12 numbers 1 through 7, and it lists knock door, police,  
13 search warrant, break window, flashbang, et cetera.  
14 Do you remember those items being  
15 specifically discussed?  
16 A. Yes.  
17 Q. Do you remember them being discussed in that  
18 order?  
19 A. Well, not in that order. I mean, it appears  
20 to me you need to break the window before you deploy  
21 the flashbang.  
22 Q. Well, I think that's the order that they are  
23 in, though, is to break the window --  
24 A. It says flashbang and then underneath that it  
25 says break window.

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1 Q. I'm looking at something different than you  
2 are, then, because I see knock door, Number 1; police,  
3 search warrant, Number 2; 3. break window; and 4,  
4 flashbang.  
5 A. And 5, wait for noise; 6, break window --  
6 Q. Oh, I see.  
7 A. -- seven, door.  
8 Q. That's true.  
9 Oh, well, that's breaking the window in the  
10 back of the residence, correct?  
11 A. I don't know. It just says break window on  
12 my -- well, there's like the B.A --  
13 Q. Yeah, it's cut off, I'll grant you that.  
14 But up on Number 4, it says "flashbang,  
15 bedroom." And above that it says break window,  
16 correct?  
17 A. It says flashbang.  
18 MS. WESTBY: Object to form.  
19 BY MR. GOSMAN:  
20 Q. Let's do this. Let me ask you, were you  
21 aware that there was another distraction method that  
22 was going to be used that evening and that involved  
23 officers at the back of the house breaking a window?  
24 A. Yes.  
25 Q. Makes sense that that would be what's

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1 referred to in the item Number 6 in this list that  
2 we're referring to, wouldn't it?  
3 A. Yes.  
4 Q. Okay. Let's take a look at Deposition  
5 Exhibit 16 again for just a moment.  
6 Do you see that paragraph that's down towards  
7 the bottom of the page, it says "The plan was to knock  
8 on the front door"?  
9 A. Yes.  
10 Q. Okay. "The plan was to knock on the front  
11 door and announce, 'Police, search warrant.' If the  
12 door did not open immediately we would use the ram to  
13 force entry."  
14 Was that in fact the plan?  
15 MS. WESTBY: Object to the form of the  
16 question.  
17 MR. THOMPSON: Join.  
18 MS. WESTBY: Missstates the testimony.  
19 THE WITNESS: It's not the plan I remember.  
20 BY MR. GOSMAN:  
21 Q. It's the plan that's written down in this  
22 report, though, correct?  
23 A. But I didn't write this report.  
24 Q. All right. What plan did you remember?  
25 A. Well, when you're serving a search warrant,

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1 you -- knock-and-announce means that. You knock, say  
2 "police department," and then you give them a chance to  
3 open the door.  
4 Q. Unless it's a no-knock warrant, right?  
5 A. Unless it's a no-knock.  
6 Q. And then you would open the door immediately,  
7 correct?  
8 A. You wouldn't announce.  
9 Q. You wouldn't announce.  
10 All right. So you heard the statement,  
11 "Police, search warrant," at the front of the house,  
12 correct?  
13 A. Yes.  
14 Q. Do you know who made that statement?  
15 A. I know now from reading the report. But at  
16 the time, no.  
17 Q. Who was it that made that --  
18 A. Chapman.  
19 Q. Chapman.  
20 All right. And what was your cue for  
21 deploying the diversion device?  
22 A. As soon as I heard the door rammed --  
23 Q. Okay.  
24 A. -- was my cue to break the window.  
25 Q. Okay. And you don't -- all right. And you

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1 did hear the door ram -- or the door being rammed,  
2 correct?  
3 A. Yes.  
4 Q. And you broke the window?  
5 A. Yes.  
6 Q. And Officer McCaslin, then, did he -- how did  
7 he deploy the diversionary device?  
8 A. Dropped.  
9 Q. Okay.  
10 A. I mean, I'm not sure, you know, where I was  
11 standing. I saw his arm from here. But there was no  
12 throwing motion. It was a drop.  
13 Q. What did you do after you had completed this  
14 task of deploying the diversionary device?  
15 A. Eventually I went in the house.  
16 Q. How much later?  
17 A. I don't remember the exact amount of time.  
18 But I wasn't in any hurry to get in.  
19 Q. What did you see when you first walked in the  
20 house?  
21 A. I saw -- to the right of me, I saw Tricia  
22 Wachsmuth sitting on the couch and Sergeant Eckerd  
23 standing next to her.  
24 Q. All right. Let's go ahead and do another  
25 diagram.

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1 (Exhibit 54 marked)  
2 THE WITNESS: You didn't tell me what to  
3 draw.  
4 BY MR. GOSMAN:  
5 Q. Oh, yes. I want you to draw the interior of  
6 the house.  
7 A. The whole house or just the living room?  
8 Q. Well, actually, so much of the house as you  
9 can see coming in the front door.  
10 MR. THOMPSON: Do you want him to refer to  
11 Exhibit 10?  
12 BY MR. GOSMAN:  
13 Q. You may. There's a diagram of the interior  
14 of the home on the second page of Exhibit 10.  
15 A. Do you want it labeled, the rooms?  
16 Q. What I want you to do yes, is label the  
17 rooms. I think we should do that.  
18 A. (Witness complies.)  
19 Q. Okay. Now, since we haven't completed this  
20 prior exhibit -- and I want to just put a finishing  
21 touch on it before we leave this document. At the time  
22 that you arrived at the side of the house next to the  
23 window, where was the entry team?  
24 Put an X with the location of the entry team,  
25 the approximate location.

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1 A. (Witness complies.)  
2 Q. They were at the porch?  
3 A. Well, I said I followed them up. So we both  
4 kind of arrived at our positions at the same time.  
5 Q. Okay. Very good. Thank you.  
6 And then could you put entry team next to  
7 that X?  
8 A. (Witness complies.)  
9 Q. Okay. Now, let's go back to the other  
10 exhibit, which is 54, or will be.  
11 And as you walked in the front door, you -- I  
12 want you to put, to the best of your recollection, I  
13 want you to place Tricia Wachsmuth and all the officers  
14 that you saw.  
15 A. (Witness complies.)  
16 Q. And was that it? You didn't see anyone else  
17 in the house?  
18 A. Well, there was officers all over the house.  
19 Q. Do you remember where any of them were?  
20 A. Walking around the whole house.  
21 Q. All right. So they were moving?  
22 A. Yeah.  
23 Q. All right.  
24 A. Yes.  
25 Q. And --

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1 MR. THOMPSON: And for the record so that  
2 we're clear, he's got a TW for Tricia Wachsmuth, and  
3 then Sergeant Eckerdt's name is spelled out.  
4 BY MR. GOSMAN :  
5 Q. All right. Okay.  
6 MR. THOMPSON: And I assume that this  
7 rectangular shape is the couch?  
8 THE WITNESS: The couch.  
9 BY MR. GOSMAN:  
10 Q. Did you see Officer Chretien -- or did you  
11 hear Officer Chretien direct any remarks to Tricia  
12 Wachsmuth about going into the basement?  
13 A. No.  
14 Q. How long did you stay in the position that  
15 you were in when you made these initial observations?  
16 A. When I walked in and I was right here by the  
17 front door, I looked over and saw Tricia, who was  
18 dialing her cell phone. And I told her -- or I asked  
19 her who she was dialing. She said, "My husband." I  
20 told her to hang up the phone.  
21 Q. Okay. All right. And that would be pretty  
22 good evidence that her husband wasn't in the house,  
23 wouldn't it?  
24 A. Well, I guess he could have been in the  
25 basement.

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1 Q. Okay. All right. So you asked her to hang  
2 up the phone. Did she comply?  
3 A. Yes.  
4 Q. Was she compliant to all the commands that  
5 you heard being made to Tricia Wachsmuth?  
6 A. That was the only thing that I had heard.  
7 Q. All right.  
8 A. What I said. I didn't hear anybody else --  
9 Q. Well, did Sergeant Eckerdt have his gun  
10 pointed at Tricia Wachsmuth?  
11 A. No.  
12 Q. Did any of the other officers in the house  
13 have their guns pointed at Tricia Wachsmuth at the time  
14 you entered the house?  
15 A. Not when I entered. Sergeant Eckerdt was the  
16 only one there.  
17 Q. All right. So then what happened?  
18 A. Then I ended up going into the spare bedroom  
19 when somebody had asked if the closet in there had been  
20 cleared.  
21 Q. So you did participate in the clearing of the  
22 house to that extent?  
23 A. Well, what you do in a situation like that is  
24 the first team goes in and looks for people quickly to  
25 diffuse any situation. And then whoever comes in



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1 behind will do a secondary search to make sure that --  
2 under the beds and closets, that kind of stuff.  
3 everything is clear.  
4 Q. Was that something that you were assigned to  
5 do?  
6 A. I wasn't assigned, no.  
7 Q. Did someone ask you to do that?  
8 A. I just heard somebody say "Has that closet  
9 been cleared?"  
10 Q. And you went into the spare bedroom. And how  
11 long were you there?  
12 A. I don't know the amount of time.  
13 Q. When you came out, what did you see?  
14 A. When I came out, I believe -- I don't really  
15 remember if I went into the master bedroom or if I went  
16 outside to check on the guys that were searching the  
17 garage.  
18 Q. When you came out of the bedroom, what did  
19 you see?  
20 A. All I remember is if I went into the  
21 master -- I don't remember seeing anything.  
22 Q. Was Tricia Wachsmuth still on the couch?  
23 A. I don't know where she was. I didn't see  
24 her.  
25 Q. Did you go into the master bedroom and then

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1 leave the house?  
2 A. At some point I went out to the garage,  
3 within a short amount of time.  
4 Q. And how short? I mean, was it within a  
5 minute?  
6 A. Within several minutes. I don't want to --  
7 it wasn't that long.  
8 Q. And as you walked out of the door of the  
9 house, you don't remember seeing Tricia Wachsmuth?  
10 A. No. She wasn't there.  
11 Q. She wasn't there.  
12 Were any other officers there at that time?  
13 A. I don't remember any.  
14 Q. Do you know where Tricia Wachsmuth was?  
15 A. No.  
16 Q. Did you hear Officer Chretien say you're  
17 going first?  
18 A. No.  
19 Q. Did you hear Officer Chretien say anything?  
20 A. No.  
21 Q. Did you see anyone assembled in the living  
22 room taking Tricia Wachsmuth down the stairs?  
23 A. No.  
24 Q. When you went into the master bedroom, did  
25 you notice that there was -- that the bedding was

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1 smoldering and there either was a fire or had been a  
2 fire in the bedroom?  
3 A. I didn't see any evidence of a fire.  
4 Q. Did you go into the bathroom?  
5 A. Yes.  
6 Q. Did you notice the burned out pillow in the  
7 shower?  
8 A. There was something in the shower. I didn't  
9 pay attention to what it was.  
10 Q. Were you clearing the shower?  
11 A. No.  
12 Q. And --  
13 A. That would have been later on when the  
14 searching was taking effect that I saw that.  
15 Q. Okay. Did you smell smoke?  
16 A. Yes.  
17 Q. Did you hear the smoke alarm?  
18 A. Yes. But a flashbang creates a lot of smoke.  
19 Q. Did you see the bedding in the bedroom?  
20 A. Yes.  
21 Q. Did you see that it was burned?  
22 A. I didn't see any burn marks.  
23 Q. I take it, then, that you didn't see any  
24 evidence of a fire?  
25 A. There was a -- behind the bed, there was a

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1 V-shaped scorch mark.  
2 Q. A funnel scorch mark.  
3 So you observed that but you didn't observe  
4 that the bedding itself was burned?  
5 A. No.  
6 Q. When you were in the house, did you ever see  
7 Sergeant Chretien?  
8 A. Yes.  
9 Q. All right. Where was he and when?  
10 A. I don't know exactly when and where he was.  
11 But at one point, when we determined that Bret was at  
12 his dad's house, I talked to Sergeant Chretien and  
13 Sergeant Eckerdt about going out to Tom's house.  
14 Q. What was that discussion?  
15 A. That they needed to go out and get Bret.  
16 Q. Did you talk to Tom Wachsmuth?  
17 A. No, I didn't.  
18 Q. Who did?  
19 A. I would assume that Sergeant Chretien and  
20 Sergeant Eckerdt did when they arrived at his house.  
21 Q. You didn't go with them to his house?  
22 A. No.  
23 Q. But there was a discussion that you had with  
24 Sergeant Chretien apparently after -- was this after  
25 the house had been secured?

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1 A. Yes.  
2 Q. Ten, 15, 20 minutes later?  
3 A. I don't know the timeframe. It wasn't very  
4 long.  
5 Q. Chretien and Eckerdt went out to Wachsmuth's?  
6 A. I -- along with Danzer.  
7 Q. Okay.  
8 A. Now, to follow up on an earlier point, there  
9 was some consideration to that because at the time, our  
10 task force officer was in Afghanistan or Iraq or  
11 somewhere, so Sergeant Chretien and Sergeant Eckerdt  
12 were working at DCI on a monthly rotating basis. So  
13 they had a closer relationship with Tom. So that's one  
14 of the reasons I asked them to go out there.  
15 Q. So you were the one that asked those two  
16 officers to go out to the Wachsmuth residence?  
17 A. Yes.  
18 Q. I want you to describe that conversation to  
19 me as completely as you can  
20 A. All I remember is asking them to go out to  
21 the Wachsmuth residence.  
22 Q. You told them that Bret was out there?  
23 A. Yes.  
24 Q. All right. Do you know what kind of  
25 diversionary device it was that was dropped into the

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1 technology DEF-TEC 25. And I'm going to ask you if  
2 that is -- if you've seen that document before or  
3 something like it?  
4 A. Yes.  
5 Q. You've seen this document before?  
6 A. That's what comes in the box.  
7 Q. All right. And do you see at the top of the  
8 label that this device is only to be used by law  
9 enforcement, corrections or military personnel who have  
10 successfully completed a training program in the use of  
11 distraction devices?  
12 A. Yes.  
13 Q. And you knew that when you went out there on  
14 the evening of February 24th, 2009, correct?  
15 A. I knew that we were trained in the use of  
16 distraction devices, yes.  
17 Q. Officer, what I asked you was: Did you know  
18 that this warning label stated that it was only to be  
19 used by law enforcement, corrections or military  
20 personnel who had successfully completed a training  
21 program in the use of distraction devices that night.  
22 MR. THOMPSON: Objection to form. It's been  
23 asked and answered. He said he didn't open the box.  
24 BY MR. GOSMAN:  
25 Q. By that night?

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1 window at the Wachsmuth residence?  
2 A. The brand name is DEF-TEC.  
3 Q. And do you know if the device contains any  
4 warning materials?  
5 A. There's a piece of paper that comes with it  
6 in the box.  
7 Q. Was it in the box when you took it out of the  
8 police station?  
9 A. I didn't take it out of the police station.  
10 Q. Did McCaslin do that?  
11 A. I don't know who took it out. I'm assuming  
12 he did since he was the one that was to deploy it.  
13 Q. Okay. Had he removed it from the box by the  
14 time you got into the car with him?  
15 A. I don't remember.  
16 Q. Did either you or he examine the warning  
17 labels that were either in the box or on the device  
18 itself?  
19 A. I've read them before, yes.  
20 Q. Did you examine them that night?  
21 A. No, I didn't hand it to him, so...  
22 (Exhibit 7 identified)  
23 BY MR. GOSMAN:  
24 Q. Okay. Let's go to Exhibit 7. The first page  
25 of Exhibit 7 is the warning label for the defense

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1 MR. THOMPSON: What do you mean "by that  
2 night"?  
3 BY MR. GOSMAN:  
4 Q. You knew before you went out there that  
5 evening on the 24th of February that this warning  
6 device was in the box and that, in fact, it stated that  
7 it was only to be used by law enforcement personnel who  
8 had completed a training program in the use of  
9 distraction devices, correct?  
10 MS. WESTBY: Object to the form of the  
11 question.  
12 MR. THOMPSON: Join.  
13 THE WITNESS: I don't know if it was in that  
14 box because I didn't hand it to them.  
15 BY MR. GOSMAN:  
16 Q. Well, you've seen it before and you knew the  
17 material, though, correct?  
18 A. Yes.  
19 Q. And then under "Instructions For Use," under  
20 Number 4, it states "Throw the device in an underhand  
21 manner into an observed area, free of personnel, loose  
22 debris or ignitable materials," correct?  
23 A. That's what it says, yes.  
24 Q. And you knew that before you went out to the  
25 Wachsmuth residence that night, correct?

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1 MR. THOMPSON: Objection as to form.  
2 MS. WESTBY: Join.  
3 THE WITNESS: Yes.  
4 MR. GOSMAN: We can go ahead and get  
5 Sergeant Eckerdt ready. We'll get started at least.  
6 MS. WESTBY: At 4:30?  
7 MR. GOSMAN: Yeah I think we better.  
8 (Discussion held off the  
9 record.)  
10 BY MR. GOSMAN:  
11 Q. Were you aware of the danger of a fire from  
12 deploying the flashbang device into flammable  
13 materials?  
14 A. Yes.  
15 Q. Is it your testimony that you didn't see any  
16 of the other officers in the living room area with  
17 Tricia Wachsmuth and Sergeant Eckerdt at the time you  
18 entered the house?  
19 A. When I entered the house, he was the only one  
20 standing next to her, yes. There may have been  
21 somebody in the kitchen, but I don't remember who.  
22 Q. All right. And you went into the bedroom --  
23 the bedrooms?  
24 A. There was two or three of us went into the  
25 spare bedroom. There was -- I know Officer Miner was

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1 in the master bedroom, and -- you know, when I came out  
2 of the spare and went into there.  
3 Q. You went into the spare bedroom with two or  
4 three other persons?  
5 A. Yeah.  
6 Q. Who were they?  
7 A. One was McCaslin, I believe.  
8 Q. He followed you in the house?  
9 A. I don't know if he followed me or I followed  
10 him.  
11 Q. Okay. Who else?  
12 A. I don't remember.  
13 Q. Did you pick someone up as you went through  
14 the door and into the bedroom from inside the house  
15 that joined you?  
16 A. I think it was more of a spontaneous. When  
17 we decided something needed to be done, we just went  
18 and did it.  
19 Q. As you walked back out of the bedroom and out  
20 of the house, did you see anyone in the living room?  
21 A. No.  
22 Q. Did you go back into the house after that  
23 before the house had been secured?  
24 A. At this point, the house was secured.  
25 Q. When did you go back in the house after you

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1 walked out?  
2 A. Well, at one point I went out and got my car  
3 and brought it around because McCaslin's bags and  
4 evidence stuff was in my car.  
5 Another point, I was in the garage. So  
6 during the course of the evening, I was in and out of  
7 the house quite a few times.  
8 Q. Well, how much time elapsed between your  
9 first -- your leaving the house after you first went  
10 into it, which we've documented with Exhibit No. -- I  
11 think it's 53 or 4, it's 4 -- 54, until you went back  
12 into the house?  
13 A. I have no idea.  
14 Q. Was it more than ten minutes?  
15 A. I wouldn't think it was that long.  
16 Q. When you went back in the house, what did you  
17 see?  
18 A. Officers milling around.  
19 Q. Had Tricia Wachsmuth been removed from the  
20 home at that time?  
21 A. I didn't see her, so I'd assumed she was  
22 transported down to the police department.  
23 Q. Did you participate in the search of the  
24 house?  
25 A. Yes.

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1 Q. What was your role in the search?  
2 A. I didn't have a specific role, other than  
3 searcher.  
4 Q. What did you do?  
5 A. Searched.  
6 Q. Which rooms?  
7 A. At the one point, the living room, the  
8 kitchen, the spare bedroom, the bathroom, the master  
9 bedroom and downstairs and the garage.  
10 Q. Okay. Did you -- was officer -- were any of  
11 the officers that were there recording the information  
12 present with you?  
13 A. Was the evidence collected documented, is  
14 that --  
15 Q. Yes.  
16 A. Yes.  
17 Q. Who was with you documenting the evidence  
18 that you collected?  
19 A. When you collect evidence, you don't collect  
20 it. You don't pick it up.  
21 Q. Right, I understand that.  
22 A. You locate it and then you photo it and then  
23 it's collected by one of the evidence technicians,  
24 which would have been Officer McCaslin or  
25 Officer Chapman.

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1 Q. All right. Did you take any pictures?  
2 A. No.  
3 Q. Did you have a camera?  
4 A. No.  
5 Q. Did you notice any of the officers out in  
6 front of the house making signs with their hands for a  
7 photograph?  
8 A. There was no officers out front making signs.  
9 Q. That you saw?  
10 A. I was out front for the last third of the  
11 operation watching the cars while they were loading the  
12 evidence and there was nobody out there making signs.  
13 Q. Of course by that time Tricia Wachsmuth was  
14 long gone, correct?  
15 A. Yes.  
16 Q. Did you find any evidence in the home,  
17 personally?  
18 A. I don't remember if I located anything  
19 specific.  
20 Q. Did you see the marijuana plants?  
21 A. Yes.  
22 Q. How tall were they?  
23 A. Two feet.  
24 Q. You think they would have flushed down the  
25 toilet?

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1 A. Well, I know basement toilets have more  
2 suction power than the ones up above, so they may have.  
3 Q. Was there a bathroom in the basement?  
4 A. No.  
5 Q. Did you understand that at some point Tricia  
6 Wachsmuth had been used as a human shield and led  
7 downstairs?  
8 MR. THOMPSON: Objection as to form.  
9 MS. WESTBY: Join.  
10 THE WITNESS: I learned at one point she went  
11 downstairs.  
12 BY MR. GOSMAN:  
13 Q. Did Officer Chretien ever say anything to you  
14 about the fact that he had led her down the stairs as a  
15 human shield and that he regretted that?  
16 A. No.  
17 Q. Would you agree with me that if  
18 Officer Chretien led her down the stairs and he was  
19 accompanied by most of the rest of the entry team, and  
20 they had their weapons trained on her during the course  
21 of her being led down the stairs, that that would be  
22 excessive force?  
23 MR. THOMPSON: Objection as to form.  
24 MS. WESTBY: Join.  
25 MR. THOMPSON: Misstates the facts and calls

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1 for a legal conclusion.  
2 THE WITNESS: No.  
3 BY MR. GOSMAN:  
4 Q. That would not be excessive force?  
5 A. No, I know that the Powell Police Department  
6 wouldn't do that.  
7 Q. Well, okay. And I can appreciate how you  
8 would want to get that in the record. But that wasn't  
9 my question, Officer.  
10 A. Yes, it was.  
11 Q. Would it have been an excessive use of force  
12 to lead Tricia Wachsmuth down the stairs or have her  
13 lead you down the stairs with your weapons trained on  
14 her?  
15 MR. THOMPSON: Objection as to form.  
16 Misstates the evidence.  
17 MS. WESTBY: Join.  
18 THE WITNESS: Yes, it would have been.  
19 BY MR. GOSMAN :  
20 Q. Would it have been excessive force to have  
21 Tricia Wachsmuth in front of the officers being led  
22 into an uncleared area of the home?  
23 MS. WESTBY: Object to the form of the  
24 question. Misstates the evidence and testimony.  
25 MR. THOMPSON: Join. Calls for a legal

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1 conclusion.  
2 MS. WESTBY: Join.  
3 THE WITNESS: I wasn't there, so I can't  
4 answer whether she was led anywhere.  
5 BY MR. GOSMAN:  
6 Q. Well, you were there, of course. Whether you  
7 saw it or not, I guess remains to be seen.  
8 But you were there, and my question had  
9 nothing to do with that.  
10 My question was: Would you agree with me  
11 that if Officer Chretien led her -- or had her lead him  
12 down the stairs into an uncleared area, that that would  
13 be an excessive use of force?  
14 MR. THOMPSON: Counsel, you're asking him  
15 questions which are hypothetical, they call for a legal  
16 conclusion, and he's not been retained to provide  
17 expert opinion in this case. He's a fact witness.  
18 MR. GOSMAN: I think you listed every one of  
19 your officers as expert witnesses.  
20 MS. WESTBY: To testify in their own defense.  
21 There's case law about it.  
22 MR. GOSMAN: I'm not arguing that. I just --  
23 I want an answer to this question.  
24 MR. THOMPSON: Well, it's a hypothetical.  
25 MR. GOSMAN: It is a hypothetical.

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1 MS. WESTBY: And we're done with  
2 hypotheticals.  
3 MR. GOSMAN: No, we're not.  
4 MS. WESTBY: Yeah, we are not going to ask  
5 him opinions and he's not going to give you expert --  
6 MR. GOSMAN: I am entitled to know what this  
7 officer's perceptions are of excessive force because  
8 they do have relevance in terms of what his duties were  
9 there that evening.  
10 MS. WESTBY: No, you've already established  
11 that he didn't hear it. He didn't know what was going  
12 on. There's nothing -- there's no place to go further  
13 with it.  
14 MR. THOMPSON: You've got a right to ask him  
15 what his personal knowledge is and what his opinions  
16 are of the events that he witnessed, but not a  
17 hypothetical question which he's already testified he  
18 didn't see any of this.  
19 BY MR. GOSMAN:  
20 Q. Would you agree that it would be an excessive  
21 use of force to use an individual who was in a  
22 residence being searched as a human shield?  
23 MS. WESTBY: Object to the form of the  
24 question. And, again, this -- he's already testified.  
25 MR. GOSMAN: Yes or no?

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1 MS. WESTBY: No, he's already testified that  
2 that's not his understanding or his perception of what  
3 happened in this instance. So if you're asking him his  
4 opinion about whether a hypothetical set of facts  
5 constitute excessive force, that is an expert opinion  
6 that you are not entitled to try to elicit from him.  
7 MR. THOMPSON: Objection as to form.  
8 BY MR. GOSMAN:  
9 Q. All right. Was the -- or is the use of an  
10 individual as a human shield in clearing operations  
11 under a dynamic entry an excessive use of force as you  
12 understand it?  
13 MS. WESTBY: No.  
14 BY MR. GOSMAN:  
15 Q. As you understand it?  
16 MS. WESTBY: No, same objection. He --  
17 MR. GOSMAN: You made your objections.  
18 MS. WESTBY: He already testified that that  
19 was not his understanding of what happened in this  
20 case. So you are not allowed to ask him hypotheticals  
21 and then ask his opinion about that, Jeff.  
22 MR. GOSMAN: Are you instructing him not to  
23 answer?  
24 MS. WESTBY: Yes, I am.  
25 MR. GOSMAN: I'm not calling the magistrate,

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1 I can tell you that. But if I did, he'd be answering  
2 the question.  
3 BY MR. GOSMAN:  
4 Q. Do you understand that as an officer, you are  
5 responsible to ensure that your fellow officers do not  
6 violate the constitutional rights of others in their  
7 presence?  
8 MS. WESTBY: Object to the form of the  
9 question. You didn't state that right. You mean in  
10 your --  
11 MR. GOSMAN: I didn't state that right.  
12 MS. WESTBY: -- in your presence?  
13 MR. GOSMAN: Yeah, in their presence.  
14 MS. WESTBY: If you understand the question.  
15 THE WITNESS: I don't.  
16 BY MR. GOSMAN:  
17 Q. All right. Do you understand that an officer  
18 is responsible to ensure that his fellow officers do  
19 not violate the constitutional rights of others in  
20 their presence?  
21 A. In whose presence?  
22 Q. That would be the officer observing the  
23 constitutional rights.  
24 A. Yes.  
25 Q. Was there any damage done to the home

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1 incidental to this execution of this search warrant?  
2 A. Damage I saw was to the front door. I  
3 believe there was a hole in the bathroom door. And the  
4 scorch mark on the wall was the only thing I can  
5 remember.  
6 Q. Of course, you broke the window?  
7 A. Oh, and the window, yes, I'm sorry.  
8 Q. Right. You didn't see anything else?  
9 A. Not that I remember.  
10 Q. All right. Were you aware that someone  
11 apparently placed a piece of plywood over the window  
12 and screwed it into the siding of the house? Did you  
13 know about that?  
14 A. I thought Bret's dad did that, Tom.  
15 Q. So you don't know whether -- you don't know  
16 who did?  
17 A. It wasn't done while I was there, no.  
18 Q. Was there a debriefing of this warrant  
19 service after it was all said and done?  
20 A. I don't remember if there was one that night  
21 or if there was one the next day or if everybody was  
22 present. I really don't remember.  
23 Q. You don't remember anything about it?  
24 A. Not a  
25 everybody-get-together-as-a-group-and-debrief, no, I

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1 don't think so.  
2 Q. Did you get together with anyone after the  
3 warrant had been served to discuss what happened that  
4 night?  
5 A. Not that night. I did the next day with  
6 Chief Feathers.  
7 Q. Okay. What did you discuss?  
8 A. Serving the warrant.  
9 Q. What was said in that conversation? What did  
10 you say? What did Chief Feathers say?  
11 A. I don't remember specifically. I think I  
12 just filled him in on the operation, what happened.  
13 Q. And you weren't aware that Tricia Wachsmuth  
14 had been used as a human shield that night?  
15 MR. THOMPSON: Objection as to form.  
16 MS. WESTBY: Object to the form of the  
17 question.  
18 THE WITNESS: I was aware that she went  
19 downstairs. I don't know where human shield came from.  
20 BY MR. GOSMAN:  
21 Q. Okay. And you weren't aware that she was  
22 taken downstairs with the officers pointing their  
23 rifles at her, behind her?  
24 MR. THOMPSON: Objection as to the form.  
25 Misstates the evidence.

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1 MS. WESTBY: Join.  
2 THE WITNESS: No.  
3 BY MR. GOSMAN:  
4 Q. And you weren't aware that the officers, when  
5 they entered the house, trained their rifles on Tricia  
6 Wachsmuth?  
7 MR. THOMPSON: Objection as to form.  
8 THE WITNESS: I wasn't there, so I don't  
9 know.  
10 BY MR. GOSMAN:  
11 Q. And you weren't aware that Chretien commanded  
12 Tricia Wachsmuth to go down the stairs first?  
13 MS. WESTBY: Objection.  
14 MR. THOMPSON: Objection as to form.  
15 THE WITNESS: I think I answered that already  
16 and said no.  
17 BY MR. GOSMAN:  
18 Q. And you weren't aware that the officers who  
19 went down the stairs with Tricia Wachsmuth had their  
20 rifles trained on her from the time she got up from the  
21 couch to take them down the stairs?  
22 MS. WESTBY: Object to the form of the  
23 question. Misstates testimony and evidence.  
24 MR. THOMPSON: Join.  
25 BY MR. GOSMAN:

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1 Q. Yes or no?  
2 A. I wasn't aware, because it didn't happen.  
3 Q. Well, Officer, you told me that you didn't  
4 see anything in the living room.  
5 A. Well, then you just asked me if I was aware.  
6 So, no.  
7 Q. But you didn't see it. You don't know  
8 whether it happened or not.  
9 A. I know the officers of Powell Police  
10 Department.  
11 Q. Well, did you know that -- Officer Chretien  
12 well enough to know that he wouldn't take Tricia  
13 Wachsmuth down the stairs as a human shield?  
14 MR. THOMPSON: Objection as to form.  
15 MS. WESTBY: Join.  
16 THE WITNESS: I don't understand what you're  
17 asking.  
18 BY MR. GOSMAN:  
19 Q. Well, you're telling me that you know the  
20 officers of the Powell Police Department and you're  
21 prepared to stand here and certify to their good  
22 behavior. And I want to know if you knew  
23 Officer Chretien well enough to know that he would  
24 never take Tricia Wachsmuth down the stairs and use her  
25 as a human shield?

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1 MR. THOMPSON: Objection as to form.  
2 THE WITNESS: I don't know if he did take her  
3 down the stairs and use her as a human shield, no.  
4 BY MR. GOSMAN:  
5 Q. You don't know any of this stuff, do you?  
6 MS. WESTBY: Object to the form of the  
7 question. Jeff --  
8 BY MR. GOSMAN:  
9 Q. Any of these last few questions we talked  
10 about in terms of officers pointing rifles at Tricia  
11 Wachsmuth and leading her down the stairs, you don't  
12 know whether that's true or not?  
13 A. I didn't see it, no.  
14 Q. Well, I think you did say that officer --  
15 that the other officers were not training their weapons  
16 at Tricia Wachsmuth, but you weren't so sure whether  
17 Mike Chretien would use her as a human shield and lead  
18 her down the stairs. Is that true?  
19 MS. WESTBY: Object --  
20 THE WITNESS: No, I didn't say that.  
21 MS. WESTBY: -- to the form of the question.  
22 That completely, completely misstates his testimony.  
23 THE WITNESS: I said I saw Sergeant Eckerdt  
24 standing next to her and his weapon was not pointed at  
25 her.

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1 BY MR. GOSMAN:  
2 Q. Okay. Let's take a look at Exhibit -- I  
3 think it's 36 -- 35. No, it's not 35, it's 36. I'm  
4 sorry.  
5 (Exhibit 36 identified)  
6 BY MR. GOSMAN:  
7 Q. Looks like we have some e-mail from Alan  
8 Kent. Interestingly enough, you're the only officer  
9 that has produced any e-mail in this case.  
10 Can you tell me what these e-mails are about?  
11 Let's go ahead and look at Exhibit 36 and take each one  
12 of these e-mails one by one.  
13 A. They were e-mails I got from my sent file.  
14 That was the only e-mails I could find that I had when  
15 I was asked to produce them.  
16 Q. Okay. The first one there is to Kirk  
17 Chapman, correct?  
18 A. Yes.  
19 Q. And was Kirk Chapman on the entry team?  
20 A. Yes.  
21 Q. And he also was responsible for the evidence  
22 report?  
23 A. He was part of the evidence collection team,  
24 yes. And he wrote the evidence report, yes.  
25 Q. And you wanted him to get it first thing on

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1 Monday morning, and that was dated March 1, correct?  
2 A. Yes.  
3 Q. On March 16, "Guys, do not throw away,  
4 dispose of, or return any evidence from the Wachsmuth  
5 case. It probably will be needed." What was that  
6 about?  
7 A. I think we found out we were getting sued.  
8 Q. Okay. And then on March 5th, this is 2009,  
9 back in 2009 again, you were communicating with Dave  
10 Brown over the computer, correct?  
11 A. Yes.  
12 Q. Did you understand that the computer  
13 contained pornographic images that had been placed  
14 there by the confidential informant?  
15 A. I understood the confidential informant said  
16 that Bret Wachsmuth was looking at child porn.  
17 Q. The confidential informant said Bret  
18 Wachsmuth was looking at child porn. Is that what you  
19 just said?  
20 A. Yes.  
21 Q. All right. Where -- who told you that?  
22 A. I believe it was in the briefing. I don't  
23 know. That's why we sent the computer off.  
24 Q. Well, Dave Brown has filed a report in this  
25 case and I'll just represent to you that Dave Brown

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1 indicates that he interviewed Bret Wachsmuth and  
2 learned from Bret Wachsmuth that the confidential  
3 informant had put child porn on his computer.  
4 Does that ring a bell with you?  
5 MS. WESTBY: That was his excuse for why  
6 there was child porn --  
7 MR. GOSMAN: I'm not asking for a narrative  
8 on why this evidence is relevant.  
9 MS. WESTBY: Don't represent to this witness  
10 that he's incorrect in his understanding, because he's  
11 not.  
12 MR. GOSMAN: Oh, he's not, okay.  
13 MS. WESTBY: No, he's not.  
14 BY MR. GOSMAN:  
15 Q. All right. So I want you to go to the record  
16 and show me where in any of this material there's any  
17 allegation from the confidential informant that Bret  
18 Wachsmuth was putting pornographic material on his  
19 computer, child porn.  
20 MS. WESTBY: In an effort to save time, the  
21 probable cause affidavit -- I don't know what...  
22 MR. GOSMAN: That's 13 -- oh, no, that's 15.  
23 MS. WESTBY: It's the second one is one place  
24 where that's located.  
25 MR. GOSMAN: I believe that's 15.

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1 MS. WESTBY: It's 00089.  
2 THE WITNESS: 0089?  
3 MS. WESTBY: Well, let me make sure.  
4 (Exhibits 14, 15, and 21  
5 identified)  
6 MR. GOSMAN: Let's see. Affidavit of  
7 probable cause is 137. Okay. Yeah, there are two  
8 affidavits of probable cause. They start at 137 and go  
9 to approximately 49.  
10 But it's not consecutive. Because there's  
11 three pages. One is Exhibit 15 and one is Exhibit 14.  
12 Two affidavits of probable cause.  
13 And the Brown report is Exhibit 21. And  
14 there's two pages. And it's the second page.  
15 And as you'll notice on Exhibit No. 21, the  
16 second page, Brown's report of his interview with Bret  
17 Wachsmuth, he says that -- and this is at the -- I  
18 think it's -- it says -- he stated that -- Wachsmuth  
19 stated that -- had been looking at child porn and doing  
20 meth. He stated that they kicked him out the first  
21 week of February and noticed the porn a week after he  
22 moved out. You see that?  
23 MR. THOMPSON: Is there a question pending?  
24 BY MR. GOSMAN:  
25 Q. Yeah. That's, do you see that?

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1 A. Where is that at?  
2 Q. That's in Exhibit 22 -- 21, second page of  
3 Exhibit 21.  
4 A. Yes.  
5 Q. Okay. Now --  
6 MS. WESTBY: No, there's still a question  
7 about...  
8 MR. GOSMAN: Do you want to take over the  
9 deposition?  
10 MS. WESTBY: No, I want him to answer your  
11 question.  
12 MR. GOSMAN: I do too, and I'm going to ask  
13 him again.  
14 BY MR. GOSMAN:  
15 Q. I want you to go through this record and tell  
16 me where in this record there's a statement that the  
17 confidential informant had stated that Bret Wachsmuth  
18 was looking at child porn.  
19 Going to take just a break for a minute while  
20 you do that.  
21 But let me say that it's probably going to be  
22 in the affidavits of probable cause, the affidavit for  
23 search warrant, or in Chad Miner's report since he was  
24 the only one that talked to the confidential informant.  
25 (Recess taken 4:49 to 4:52)

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1 p.m., November 22, 2010)  
2 MR. GOSMAN: Officer, have you found  
3 anything?  
4 A. No, not yet.  
5 Q. All right. Well, we're going to go ahead and  
6 move on. Did you read Miner's report?  
7 A. Yeah, I know I've read it somewhere. I just  
8 can't find it at the moment.  
9 Q. Okay. Let me turn your attention to the  
10 e-mail dated March 3rd, 2009.  
11 A. What was the number of the e-mails, again,  
12 I'm sorry?  
13 Q. Yes, it's 36.  
14 A. Okay. Which one now?  
15 Q. It's dated March 3rd. It's from Alan Kent to  
16 Chad Miner. It's Bates numbered 585.  
17 A. Okay.  
18 Q. Okay. Tell me about this e-mail. Had you  
19 talked with Tim Feathers about these charges?  
20 A. This e-mail, I believe, is Tim Black.  
21 Q. Alan Kent to Chad Miner, talked -- oh, I see,  
22 Tim. So this is Tim Black?  
23 A. Yeah.  
24 Q. Talked with Tim about why Bret was charged  
25 with a misdemeanor. The reason was the weight was

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1 unknown. So you wanted to...  
2 A. Tim Black was the Assistant County Attorney.  
3 Q. Okay.  
4 A. And the discussion was weighing the plants,  
5 and they totaled up to be felony amounts.  
6 Q. Okay. Did you want to see the charges  
7 upgraded to a felony? Is that why you were having this  
8 discussion?  
9 MS. WESTBY: Object to the form of the  
10 question.  
11 MR. THOMPSON: Join.  
12 THE WITNESS: I don't know in the first place  
13 why they weren't a felony. That was my question.  
14 BY MR. GOSMAN:  
15 Q. Okay. At that point you still didn't realize  
16 that the marijuana grow was a misdemeanor?  
17 A. No. And I can't remember the -- seems to me  
18 the law changed in there somewhere. So, no, I didn't.  
19 Q. All right.  
20 A. But the weight would have been because it was  
21 almost 400 grams.  
22 Q. Four hundred grams?  
23 A. (Witness nods head.)  
24 Q. Did that include -- that included the entire  
25 plant?

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1 A. Less the potting soil and the pot.  
2 Q. All right.  
3 THE WITNESS: If this is going to go on much  
4 longer, I'm going to have to take a break, I'm about  
5 ready to bust.  
6 MR. GOSMAN: And I certainly understand that.  
7 BY MR. GOSMAN:  
8 Q. All right. One last question. Have you had  
9 any conversations with any of the officers about this  
10 warrant service where the officers expressed regret  
11 over the way things were handled?  
12 MS. WESTBY: Object to the form of the  
13 question.  
14 MR. THOMPSON: Join.  
15 THE WITNESS: Yes.  
16 BY MR. GOSMAN:  
17 Q. Yes? Tell me what those discussions were.  
18 A. There was some concerns about Tricia going  
19 downstairs.  
20 Q. Tricia going down the stairs?  
21 A. Yeah.  
22 Q. All right. Who did you have that discussion  
23 with?  
24 A. I talked with Chief Feathers about it. I  
25 talked to Sergeant Eckerd, Officer Miner, Investigator



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1 Brown. Investigator Brown and Officer Miner approached  
2 me.  
3 Q. So apparently, it was widely known that  
4 Tricia Wachsmuth had been taken down the stairs first  
5 into an uncleared area of the house?  
6 MS. WESTBY: Object to the form of the  
7 question.  
8 MR. THOMPSON: Join.  
9 MS. WESTBY: Misstates the testimony.  
10 THE WITNESS: It was widely known that she  
11 went downstairs.  
12 BY MR. GOSMAN:  
13 Q. Did you know that she'd gone downstairs first  
14 with the officers behind her?  
15 A. That night?  
16 Q. No, when you had these discussions with  
17 Chief Feathers and the others about these regrets.  
18 A. I don't know where she was in line. I don't  
19 remember.  
20 Q. All right. Thank you very much.  
21 A. Is that it?  
22 Q. See you later. You bet.  
23 (Proceedings concluded at 4:57  
24 p.m., 11/22/10.)  
25

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1 DEPONENT'S CERTIFICATE

2 I, ALAN KENT, do hereby certify, under  
3 penalty of perjury, that I have read the foregoing  
4 transcript of my testimony consisting of 185 pages,  
5 taken on November 22, 2010 and that the same is, with  
6 any changes noted below, a full, true and correct  
7 record of my deposition.

8 PAGE	9 LINE	10 CORRECTION	11 REASON FOR CORRECTION
9			
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ALAN KENT Date

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1 CERTIFICATE

2 I, VONNI R. BRAY, Registered Professional  
3 Reporter, and Notary Public for the State of Montana,  
4 do hereby certify that ALAN KENT was by me first duly  
5 sworn to testify to the truth, the whole truth, and  
6 nothing but the truth;  
7 That the foregoing transcript, consisting of  
8 186 pages, is a true record of the testimony given by  
9 said deponent, together with all other proceedings  
10 herein contained.  
11 IN WITNESS WHEREOF, I have hereunto set my  
12 hand this 11th day of December, 2010.  
13  
14  
15  
16  
17  
18  
19  
20  
21 Vonni R. Bray, RPR  
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24 (406) 670-9533 Cell  
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	<b>137 (2)</b> 180:7,8	178:8,9;182:10	<b>3rd (2)</b> 182:10,15	16:20
<b>0</b>	<b>14 (2)</b> 180:4,11	<b>2010 (4)</b> 19:5;32:11;105:2; 182:1	<b>4</b>	<b>A</b>
<b>00089 (1)</b> 180:1	<b>15 (17)</b> 32:9;74:8;76:16,20; 77:6,18;78:4;79:7,21; 114:24;115:17,20; 157:2;179:22;180:4, 11	<b>21 (5)</b> 180:4,13,15;181:2,3	<b>4 (10)</b> 68:17;71:22;72:1,18; 120:11;145:3,14; 160:20;163:11,11	<b>abandoned (1)</b> 47:1
<b>0089 (1)</b> 180:2	<b>16 (5)</b> 90:7,10;108:2,146:5; 178:3	<b>22 (5)</b> 19:5;32:11;105:2; 181:2;182:1	<b>4:30 (1)</b> 161:6	<b>ability (3)</b> 6:20,24;63:10
<b>06 (4)</b> 25:6,9;33:6;37:2	<b>18 (2)</b> 111:13;126:25	<b>23 (1)</b> 30:19	<b>4:49 (1)</b> 181:25	<b>able (3)</b> 101:19;139:4;141:8
<b>09 (2)</b> 55:18;58:6	<b>1814 (1)</b> 22:17	<b>24 (1)</b> 10:14	<b>4:52 (1)</b> 181:25	<b>above (6)</b> 36:6;57:24;59:12,13; 145:15;166:2
<b>09-223 (1)</b> 57:9	<b>19 (1)</b> 128:12	<b>24th (8)</b> 33:11;50:7;53:4;57:2; 61:16;62:4;159:14; 160:5	<b>4:57 (1)</b> 185:23	<b>absolutely (1)</b> 104:20
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<b>1 (4)</b> 78:15;144:12;145:2; 178:1	<b>1982 (1)</b> 15:22	<b>250 (1)</b> 6:18	<b>400 (1)</b> 183:21	<b>accompanied (1)</b> 166:19
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<b>1/28 (1)</b> 60:18	<b>1995 (11)</b> 9:19;10:5;40:14; 41:18;42:9,10,15,24; 44:2;48:19;129:16	<b>26 (3)</b> 55:13,16;56:24	<b>5</b>	<b>according (2)</b> 86:21;120:15
<b>10 (13)</b> 17:13;90:14,16;94:14; 107:17,19;109:25; 138:16;143:1,20; 144:10;149:11,14	<b>1st (2)</b> 9:19;15:20	<b>28 (2)</b> 17:23,25	<b>5 (3)</b> 55:16;130:14;145:5	<b>accnrate (1)</b> 94:19
<b>10/21 (1)</b> 22:22	<b>2</b>	<b>29 (4)</b> 110:24;111:1;113:17; 126:23	<b>5/4/1995 (1)</b> 16:17	<b>accurately (1)</b> 15:17
<b>10/5/2005 (1)</b> 16:23		<b>3</b>	<b>51 (2)</b> 10:20;11:1	<b>accused (1)</b> 8:13
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